

Ecosystem Management Coordination

Court Decisions

Forest Management/Wildlife | Region 5

Conservation Congress and Citizen for Better Forestry v. U.S. Forest Service and U.S. Fish and Wildlife Service, et al. (13-0934, E.D. Cal.) Region 5—On May 17 the Eastern District Court of California issued a favorable decision to the Forest Service and the U.S. Fish and Wildlife Service (FWS), regarding the **Pettijohn Project** on the **Shasta-Trinity National Forest**, concerning alleged project impacts on the Northern Spotted Owl. The Forest Service and FWS prevailed against alleged violations of the Endangered Species Act (ESA), National Forest Management Act (NFMA), National Environmental Policy Act (NEPA), and Administrative Procedures Act (APA). The Environmental Impact Statement and ROD was signed on March 13, 2013. The Project is a Habitat improvement and fuels reduction project authorized under the Healthy Forest Restoration Act (HFRA). Consists of about 13,162 acres of NFS and 8,409 acres of private land containing four “WUI’s”. Proposed Action was to thin mature stands to reduce the risk of wildfire.

District Court’s Analysis:

- I. Abandon Claim: Plaintiffs abandoned their Incidental Take Claim
- II. NEPA Claims-7th and 9th claims:

The project’s final Environmental Impact Statement (FEIS) is in accordance with the Law. The district court granted Summary Judgment for the Forest Service, FWS and Resource Council for the 7th and 9th Claims. Specifically:

 1. Reasonable Alternatives
 - a. Plaintiffs argued the Forest Service failed to give full and meaningful consideration to all reasonable alternatives and the Forest Service and FWS countered that because plaintiffs did not allege a reasonable range of alternatives in their NEPA claim, they cannot pursue such a claim for the first time now and the court agrees.
 2. Hard Look
 - a. The analyses in the FEIS and the supporting specialist reports on the project’s effects on fire, fuels, and wildlife amount to a sufficiently thorough discussion of the probably environmental consequences.

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

- b. As long as the Forest Service considered the relevant factors and articulated a rational connection between the facts found and choices made, the court must uphold the agency action. The Forest Service met that requirement.
 - c. The Forest Service's analysis is reasoned, it took a hard look at the probably environmental consequences of the project and the court gives the Forest Service the deference which it is entitled.
- 3. Supplemental Analysis
 - a. Plaintiffs fail to identify new information sufficient to show that the Pettijohn Project will affect the environment in a significant way that is not already addressed by the FEIS.
- III. NFMA Claims-5th, 6th and 10th Claims: Plaintiffs assert the Forest Service failed to satisfy the standards set forth in the Land and Resource Management Plan (LRMP) for snags, down logs and old-growth retention and for failing to ensure the Pettijohn Project is consistent with the 2011 Recovery Plan.
 - 1. The district court does not find that the Forest Service acted contrary to the law in failing to comply with the NFMA.
 - 2. The Forest Service's decision making is neither erroneous nor inconsistent with the LRMP.
- IV. HFRA Claim-8th claim: Plaintiffs assert the Forest Service violated HFRA by failing to ensure the project maintains or restores old-growth forests. The court finds the plaintiffs' argument lacks merit citing compliance with HFRA based on numerous administrative record documentation.
- V. ESA Claims-1st and 2nd claims: Plaintiffs' assert the Forest Service and FWS violated section 7 of ESA by failing to use the best available science and failing to avoid jeopardizing, destroying, or adversely modifying spotted owl critical habitat. 3rd claim asserts that the Forest Service and FWS failed to reinitiate consultation and use best available science. The court found the FWS used the best available science in conducting its critical habitat analysis. The project will not adversely modify spotted owl critical habitat and there was no need to reinitiate consultation. FWS's section 7 critical habitat analysis was consistent with the ESA, reasonable, and is supported by the administrative record. The court granted Summary Judgment for the Forest Service, FWS and Resource Council on the 1st, 2nd, and 3rd ESA claims.

Range | Region 1

Gallatin Wildlife Association, Yellow Buffalo Foundation, WildEarth Guardians, Western Watersheds Project, v. U.S. Forest Service, et al. (19-35528, 9th Cir., 15-0027, D. Mont.)

Region 1—On May 18, 2021 the 9th Circuit Court of Appeals issued an unpublished decision favorable to the Forest Service affirming the District Court of Montana's decision, concerning the Allotment Management Plans (AMP) on 7 domestic sheep allotments, on the Beaverhead Deerlodge National Forest. The 9th Circuit affirmed the district court's decision regarding the

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

Forest Service's use of a coarse filter methodology in assessing the risk of domestic sheep grazing to bighorn sheep.

The 9th Circuit Found:

The Forest Service did not violate the law in analyzing the viability of bighorn sheep, and deference to its scientific methodology is warranted. In conducting a coarse filter analysis, the Forest Service considered threats from domestic sheep grazing to bighorn sheep, including disease transmission; discussed impacts of domestic sheep grazing on bighorn sheep viability; and adequately delineated the reasons why the coarse filter methodology was employed in lieu of a fine filter analysis.

Although the Beaverhead-Deerlodge 2009 Forest Plan's final environmental impact statement (FEIS) mentioned that a fine filter analysis "was conducted for . . . species identified by the public as having viability concerns," the FEIS elaborated that only two species met the criteria for conducting a fine filter analysis as identified through public comments—the northern goshawk and the great gray owl. Contrary to Gallatin's assertions, the Forest Service did not commit to conducting a fine filter analysis for every species identified in public comments as having viability concerns, nor was it otherwise compelled to utilize the fine filter analysis for those species.

Background

On May 7, 2023 the district court issued a decision favorable to the Forest Service dismissing the complaint. The case concerns the Allotment Management Plans (AMP) on 7 domestic sheep allotments, on the Beaverhead Deerlodge National Forest. In 2016, district court issued partial summary judgment in favor of the Forest Service regarding the use of coarse filter or habitat by proxy methodology in the 2009 Forest Plan FEIS. The court ordered the agency to review new information to determine if the final EIS approving AMP on 7 domestic sheep allotments needed supplementing and it was completed in December 2017. The Forest Service was ordered to complete a supplemental EIS to the Forest's Forest Plan that evaluated the potential consequences of the 2000 and 2008 MOU between the Forest Service and Montana Fish Wildlife and Parks.

The Forest Service completed the supplemental EIS on January 26, 2018 and determined amendment of the 2009 Forest Plan is not required and affirmed the 2009 Forest Plan is not required and reaffirmed the 2009 revised Forest Plan's ROD. The Forest Service issued another ROD on Oct 26, 2018. The plaintiff's appealed the order granting partial summary judgment jointly agreeing to move the district court to enter final judgment.

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

Lands | Region 1

BAR K Ranch, et al. v. USA, Forest Service and Bureau of Land Management (19-06, D. Mont.) **Region 1**—On May 10, 2021 the District Court of Montana issued a favorable decision to the Forest Service and Bureau of Land Management (BLM). The case regards Quiet Title Act claims concerning several public and private rights-of-way over roads (RS 2477) in Madison County Montana on the Beaverhead-Deerlodge National Forest. The district court granted the Forest Service’s motion that the roads at issue constitute Forest Service roads.

The district court found:

1. Both parties agree that Revised Statute 2477 cannot apply to the roads at issue because the federal government withdrew and reserved the relevant lands for use as national forests in 1902 and no roads existed at this time.
2. Madison County approved the construction of the roads at issue in 1912 and completed them in 1915, the roads crossed national forest twice, once in Section 27 and again in Section 35.
3. Plaintiffs possess no claim to the roads at issue.
4. Plaintiffs fail to claim that the United States granted plaintiffs any sort of ownership interest in the roads at issue.
5. Plaintiffs cannot make a claim to an interest in the roads at issue via another mechanism such as an affirmative transfer of ownership.
6. Plaintiffs failed to demonstrate all necessary elements for establishing an estoppel claim against the federal government.

Background

On June 18, 2020 the plaintiffs filed an amended complaint seeking clarification on several public and private rights-of-way over roads in Madison County, which the district court held a hearing for on February 22, 2021.

On January 29, 2019, the plaintiffs filed a complaint to quiet title in the district court as to the existence, nature and location of certain established public and private rights of way over a system of historical roads in Madison County. The plaintiffs claim:

1. Quiet Title- The Original County Roads are country roads and public highways: As to any portions of the original county roads which were established over then federal lands, the public’s right of way is valid under U.S. Revised Statute Subsection 2477.
2. Quiet Title-BLM Segment is a country road and public highway: The BLM segment was accepted by affirmative acts of the state and local government of Madison County in maintaining and improving the road for years prior to the repeal of RS 2477 and thereafter, rendering the BLM segment a country road and a public highway.
3. Quiet Title-Location of public rights of way: The location of the original roads declared county roads are presently unknown, for lack of sufficient record of actions known to have taken place in Madison County.

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

4. Quiet Title-Ensuring viable public access: To the extent that the public access right of way and physical roadways have deviated, a substitute access must be secured over an existing improved maintained road and affirmative relief is necessary to compel the responsible parties to ensure this and afford public access consistent with established rights or otherwise reasonably improve or maintain the roads where the public's rights of way lies.
5. Quiet Title-Bar K's private right of way: Bar K has established private prescriptive easements across the roads or relevant portions by qualifying adverse use by Bar K for statutorily prescribed period, prior to acquisition of any such lands by the state or federal government or dedication to any public use.

Litigation Update

Nothing to Report

New Cases

Forest Management | Region 6

Kettle Range Conservation Group v. U.S. Forest Service, et al. (21-00161, E.D. Wash.)

Region 6—On May 12, 2021 the plaintiff filed a complaint in the Eastern District Court of Washington against the Forest Service, concerning the **Sanpoil Project** on the Colville National Forest. The complaint alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Administrative Procedures Act (APA) for failure to complete a meaningful analysis of the impacts of timber harvests, controlled burns and road work within 47,956 acres of the Colville National Forest. Plaintiffs further challenge the Forest Service's final decision approving the 2019 Colville Forest Plan, because it fails to protect old-growth trees from logging through projects such as the Sanpoil Project.

The plaintiff claims:

1. The Forest Service failed to Meet NEPA's Requirements in Analyzing and Disclosing the Impacts of the Sanpoil Project. The Forest Service failed to perform:
 - a. required analysis of site-specific plans for its treatments, fuels treatments and road construction; failed to fully develop site-specific plans prior to performing its EA and failed to provide the public with site-specific information to enable meaningful comments on the analysis.
 - b. sufficient direct analysis of the Projects impact on several endangered, threatened, or sensitive species.
 - c. adequate cumulative analysis of the Projects impact on the environment.
2. The Forest Service Failed to Consider a Reasonable Range of Alternatives. The Forest Service failed to:

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

- a. analyze a range of meaningful alternative by only looking at a no action alternative and precluded serious consideration of alternative that would avoid construction of additional roads or avoid construction of fuel breaks near roadless areas.
 - b. consider an alternative planned at a landscape-scale or to restore forest ecology and did not consider recommended alternatives that would enhance recreational resources.
3. The Forest Service Should Have Prepared an EIS to Evaluate Significant Environmental Impacts of the Sanpoil Project. Specifically, the Forest Service should have prepared an EIS because the project would have significant impacts when considered along: with: (1) the impacts of other related projects omitted from its analysis; (2) deals with issues of high controversy regarding old-growth; (3) recreation and shaded fuel breaks; (4) contains elements of great uncertainty and unknown cumulative impacts on wildlife, recreation and aquatic habitats; (5) would impact unique geographic areas and have adverse impacts on endangered species; (6) and set a precedent for the Agency to approve additional planned Projects in the same area without adequate disclosure.
4. The Sanpoil Project Does Not Adhere to the 2019 Colville Forest Plan, in Violation of NFMA: The plaintiffs allege the project is not consistent with the 2019 Colville Forest Plan because it fails to adhere to the plan's Scenic Integrity Objectives, moves several Forest Structures and species habitats away from the desired condition specified in the plan and fails to meet the Plan's guidelines by diminishing the scenic quality of the Forest and Wilderness characteristics of the Roadless Areas.
5. The 2019 Colville Forest Plan, which Enables the Sanpoil Project, Violates NFMA, NEPA and the APA:
 - a. The 2019 Forest Plan thus does not meet NFMA's mandate to ensure that old-growth habitat, and the numerous ecosystem services it supports, is "well distributed," and thus ensure diversity within the Forest.
 - b. Forest Service violated NEPA and APA by failing to respond to substantial public comments in adopting the new standard for logging old-growth trees, including by failing to ensure that the 2019 Colville Forest Plan FEIS adequately responded to opposing scientific views.

Background

The project is located north of the Colville Indian Reservation and about one mile south of Republic, Washington. Due to the proximity to tribal trust lands, the project was proposed under the Tribal Forest Protection Act. The project area is approximately 47,956 acres. Densely stocked stands in the project area compete for light, water, and nutrients, with droughts aggravating competition for water. Such conditions are causing trees to be less vigorous with increased vulnerability to disturbances. These conditions have resulted in mountain pine beetle and western spruce budworm outbreaks, which have been ongoing since 2011. The Forest has analyzed and approved commercial and non-commercial treatments, burning and other restoration activities.

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

Forest Management | Region 6

Klamath Forest Alliance v Blower, et al (USFS) (21-781, D. Oregon) Region 6—On May 21, 2021, the plaintiffs filed a complaint in the District of Oregon alleging violation of the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA), National Forest Management Act (NFMA) and Endangered Species Act (ESA) for authorizing the **Slater Fire Safe Re-entry Project** on the **Rogue River Siskiyou National Forest** after fires in 2020. The project was authorized under two Categorical Exclusions (CE) – **repair and maintenance CE [§ 220.6(d)(4)] and post-fire rehabilitation activities CE [220.6(e)(11)]**. Specifically, the plaintiff challenges the use of the road repair and maintenance CE for a project of this scope (along 85 miles of roadway); and claims the Forest Service failed to articulate a rational explanation as to why such a major salvage logging project constitutes road repair and maintenance allowing the Agency to avoid preparing an Environmental Impact Assessment (EIS) or Environmental Assessment (EA).

The plaintiff claims:

1. NEPA and APA Compliance: Failure to prepare an EIS or an EA:
 - a. Unlawful Use of Inapplicable CE [§ 220.6(d)(4)]: When the Forest Service promulgated a separate CE category for post-fire logging activities, they stipulated that such activities cannot exceed 250 acres. 36 C.F.R. § 220.6(e)(13). The Slater Fire Safe Re-entry Project authorizes over 4,000 acres of commercial logging activities. Marking guidelines allow most of the trees to be removed from a 400-foot-wide corridor along 85 miles of roads.
 - b. Arbitrary Conclusion That No Extraordinary Circumstances Are Present: Even if the project would otherwise fall under § 220.6(d)(4), the Forest Service is required to prepare an EA or EIS because “extraordinary circumstances” exists. One such “extraordinary circumstance” sufficient to preclude use of a CE is based on the degree of potential effects on federally listed threatened or endangered species. The Slater Fire Re-entry Project may have a significant environmental effect and admits that the project is “likely to adversely affect” Northern spotted owl.
2. NFMA and APA Compliance:
 - a. The tree felling authorized by the DM constitutes commercial “salvage logging operations” and may also include green tree removal for the purposes of the Northwest Forest Plan (NWFP) and has a duty to ensure it is consistent with the NWFP and the Forest’s Forest Plan.
 - b. Forest Service failed to make a rational determination that the logging operations and green tree removal in Late Successional Reserves are consistent with the NWFP and Forest Plan.

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

3. ESA Section 7 and APA Compliance:

Plaintiff intends to add a claim under ESA Section 7 upon expiration of the 60-day notice period if the issues raised are not resolved.

Other Agencies

Nothing to Report

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the most complete accurate discussion of each case.