

Ecosystem Management Coordination

Court Decisions

Lands | Region 8

Florida Defenders of the Environment, et al., v. U.S. Forest Service (20-12046, 11th Cir.; 17-1128, M.D. Fla.) **Region 8.** -On October 25, 2021 the 11th Circuit Court of Appeals issued a decision favorable to the Forest Service regarding the **Kirkpatrick Dam, Rodman Reservoir, and Eureka Lock and Dam** located, in part, on the Ocala National Forest and the associated **special use permit (SUP)**. The 11th Circuit affirmed the Middle District Court of Florida's September 30, 2019 decision, which concluded that the enforcement action or inaction by the Forest Service regarding the 1994 SUP, and the Forest Service's decision on the related petition for Rulemaking is at the Agency's discretion, and not subject to judicial review. The 11th Circuit directed the district court to dismiss the case without prejudice.

The 11th Circuit determined:

- Agrees that the refusal to take enforcement action is traditionally committed to agency discretion by law and the plaintiff fails to identify any statutory or regulatory constraints on the Forest Service's discretion to handle expired or unauthorized uses of National Forest System lands.
- In absence of meaningful standards to judge the Agency's exercise of discretion in this context, its decision is not subject to judicial review under the APA.
- Vacates the district court's decision to reenter its judgement without prejudice.

Background:

On September 30, 2019 the district court issued an order dismissing the plaintiff's complaint with prejudice, favoring the Forest Service concerning the Kirkpatrick Dam, Rodman Reservoir, and Eureka Lock and Dam located, in part, on the Ocala NF and the associated SUP. The district court concluded that the enforcement action or inaction by the Forest Service regarding the 1994 SUP, and the Forest Service's decision on the related petition for Rulemaking is at the Agency's discretion, and not subject to judicial review.

The plaintiffs' original complaint regards the Kirkpatrick Dam, Rodman Reservoir, and Eureka Lock and Dam located, in part, on the Ocala NF. The construction of the Rodman Dam was completed as part of the larger Cross Florida Barge Canal. The Canal was subsequently deauthorized by Congress in 1991. The property interests held by the Army Corps of Engineers,

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and the structure built and completed for purpose of constructing the Canal, including the Rodman Dam, were transferred to the State of Florida. According to the complaint, approximately 167 acres of land, together with the part of Kirkpatrick Dam and Eureka Lock are located on land owned by the United States, the State of Florida was required to apply for a SUP with the Forest Service.

Litigation Update

Nothing to Report

New Cases

Recreation | Region 5

Sierra Snowmobile Foundation, et al. v. U.S. Forest Service, et al. (21-1913, E.D. Cal.)

Region 5—On October 13, 2021 the plaintiffs filed a complaint in the Eastern District Court of California against the Forest Service regarding the **over-snow vehicle (OSV) use designation** on the Stanislaus National Forest. The plaintiffs claim the Forest Service violated the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA), National Forest Management Act (NFMA) and Travel Management Rule (TMR) with approving the OSV-use designation. Specifically, the Forest Service failed: under NEPA—to adequately consider environmental impact, meet purpose and need of the project, and use adequate scientific information in evaluation of effects. Under NFMA—OSV use designation is not consistent with the Forest Plan. Under TMR—Agency arbitrarily applied the minimization criteria.

The plaintiffs claim:

1. Violation of NEPA—Failure to Adequately Consider Environmental Impact: Failed to:
 - a. Consider a true “no-action alternative that accurately reflects baseline conditions.
 - b. Provide sufficient data or analysis to explain the adoption of 12-inch minimum snow-depth requirement.
 - c. Cite high quality scientific evidence in support of the Final ROD’s directive to “minimize the proportion NFS lands designated for motorized use located within known occupied Sierra Nevada red fox territories or within identified suitable habitat.”
 - d. Sufficiently analyze and support site-specific conclusions, including the Forest Service’s assumption that snow accumulation is categorically inadequate for OSV use below 5,000 feet in elevation and in failing to allow OSV use in certain Near Natural areas and recommended wilderness areas.
 - e. Adequately address the reason for excluding areas within the southern reaches of the Eagle Meadows area from OSV use.
2. Violation of NEPA—Failure to Meet Purpose and Need of the Project:
Failed to designate areas needed to access other areas designated for OSV use, certain historically used trails for grooming, and the open areas for cross-county OSV use results in a

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system of designated OSV-use trails and areas the is unmanageable. The selected alternative fails to meet the projects’ purpose and need, making the decision not in accordance with the law.

3. Violation of NFMA—Inconsistency with the Forest Plan:
OSV-use designation is inconsistent with the Forest Plan. By removing almost all high elevation alpine areas from OSV use, the decision fails to designate a variety of OSV recreational opportunities consistent with the Forest Plan’s goal for recreation.
4. Violation of NFMA and NEPA—Inadequate Scientific Information in Evaluation of Effects:
The decision is inconsistent with the Forest Plan because it eliminates historic OSV-use areas based on the assumptions that OSV use will endanger or harm wintering wildlife, including the Sierra Nevada red fox, without the use of the best available scientific information.
5. Violation of TMR—Arbitrary Application of the Minimization Criteria:
The decision arbitrarily applied the minimization criteria; and failed to adequately consider the TMR’s specific criteria as to the exclusion of certain high-elevation areas renders the decision arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Mining | Region 5

Friends of the Inyo, et al. v. U.S. Forest Service, et al. (21-1955, E.D. Cal.) Region 5—On October 21, 2021 the plaintiffs filed a complaint in the Eastern District Court of California against the Forest Service regarding the **Long Valley Exploration Drilling Project** on the Inyo National Forest. The plaintiffs allege the Forest Service violated the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA), and 1897 Organic Act with approving the project. The plaintiffs claim the Forest Service violated NEPA by relying on the use of a CE 8 (1-year or less for mineral exploration) and CE 6 (for habitat restoration) where extraordinary circumstance exist, such as potential project impacts to the Bi-State sage grouse and Owens tui chub and their habitats. They further claim the Forest Service split the action to bypass to bypass the 1-year operation limit of CE 8, by approving the required reclamation for the mining exploration as a separate project under a different and additional CE 6.

The plaintiffs claim:

1. Claim 1: Violation of NEPA and APA
 - a. The exploration activities will take more than one year to complete, rendering the use of the “short term” mineral exploration CE 8 inapplicable.
 - b. Reliance of a new “habitat restoration project” (CE 6) cannot be used to circumvent the 1-year limit in CE 8.
 - c. Forest Service violated NEPA when reversing its own decision that an Environmental Assessment was needed and instead approving it through CEs.

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- d. Failed to consider direct, indirect, and cumulative impacts when approving the exploration and reclamation through two CEs.
 - e. Violation NEPA by using CEs when extraordinary circumstance that would significantly affect Bi-State sage-grouse and listed fish species exists.
2. Claim 2: Violation of NEPA, 1897 Organic Act and APA
Violated NEPA and the Organic Act when approving the project without subjecting the project to public review and without a discretionary Special Use Permit required by the Organic Act. Unlawfully segmented its analysis and public review in relying upon a separate CE 6 for the reclamation of the project.

Notice of Intent to Sue

Nothing to Report

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