

Ecosystem Management Coordination

Court Decisions

Forest Management | Region 5

Public Timber Purchasers’ Group, et al. v. USDA, et al. (19-1087, E.D. Cal.) **Region 5**—On January 19, 2022, the Eastern District Court of California issued a favorable decision to the Forest Service regarding **small business share allocations** within the **Trinity Market Area** on the Shasta Trinity National Forest. Plaintiffs alleged violations of the Administrative Procedures Act, and Forest Service Handbook (FSH) 2400.18. The district court concluded that the Pacific Southwest Regional Forester’s February 13, 2019, decision, which adjusted appeals lodged by the Small Business Administration (SBA) and by Franklin Logging on December 20, 2018, and January 7, 2019 respectively, were proper.

The district court found:

1. The Pacific Southwest Regional Forester’s February 13, 2019, decision, which adjusted appeals lodged by the SBA and by Franklin Logging on December 20, 2018, and January 7, 2019 respectively, were proper.
2. The plaintiffs challenged the Regional Forester’s appeal determination that increased the Trinity Market Area from 7 to 44 percent, on the grounds that 44 percent is “a reasonable middle range” for the small business share between 7 percent floor and the 80 percent ceiling set forth in FSH 2400.18.

Litigation Update

Nothing to Report

New Cases

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 post complete accurate discussion of each case.

Notice of Intent to Sue

Nothing to Report

Other Agency Cases

Range Management | Region 3

Center for Biological Diversity and Maricopa Audubon Society, v. U.S. Bureau of Land Management, and U.S. Fish and Wildlife Service (22-8005, D. Arizona)—Region 3 (Forest Service is not named in this case) On January 12, 2022, the plaintiff filed a complaint in the District Court of Arizona against the U.S. Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) for alleged violation of the Endangered Species Act (ESA) and the Administrative Procedures Act (APA) from livestock grazing impacting listed species and degrading critical habitat on the Horseshoe Allotment within the Agua Fria National Monument. The plaintiffs' claim: (1) the BLM and FWS failed to reinitiate and complete ESA Section 7 consultation based on new information that reveals grazing is adversely impacting listed species and newly designated critical habitat; and (2) the FWS failed to properly consider all relevant facts, provide rational connection to the facts and evidence before the Agency issued its November 6, 2018 Letter of Concurrence as part of the Horseshoe Allotment 10-year term permit renewal.

The plaintiffs claim:

1. The BLM and FWS are in ongoing violation of the ESA for failing to reinitiate and complete consultation of the Horseshoe Allotment 10-year permit renewal.
 - a. Despite significant new information that reveals that grazing on the allotment has adversely affected, and will continue to adversely affect, threatened, and endangered their critical habitat in a manner and to an extent not considered within the 2018 Letter of Concurrence, and despite new critical habitat being designated.
 - b. The BLM is in ongoing violation under Section 7 of the ESA to ensure that its actions are not likely to jeopardize the continued existence of the Gila chub, Gila topminnow, yellow-billed cuckoo, and northern Mexican garter snake, or result in the destruction or adverse modification of designated critical habitat.
2. FWS's 2018 Letter of Concurrence is arbitrary, capricious, and contrary to the ESA. FWS failed to properly consider all relevant facts, failed to provide rational connection between the facts found and the agency's conclusion, and reached a conclusion that runs counter to the facts and evidence that was before the agency.

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Background

On June 14, 2021, the plaintiffs sent a 60-day notice letter to the Secretary of Interior, FWS, and BLM, identifying the ESA violations identified in the complaint. On August 13, 2021, the FWS and BLM responded to the plaintiffs NOI. On August 26, 2021, the plaintiffs provided FWS and BLM with a supplemental NOI that provided documentation of destructive cattle grazing within the riparian areas of Silver Creek, Long Gulch, and the Aqua Fria River, within the monument.

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