

NFS Litigation Weekly

June 30, 2017

Ecosystem Management Coordination



Court Decisions

1. Land Use | Region 1

The District of North Dakota ruled favorably for the Forest Service on actions filed by North Dakota and several counties seeking quiet title to claims of section line rights-of-way on the Dakota Prairie Grasslands. The order consolidated *North Dakota et al. v. United States of America* and *Billings County et al. v. United States of America*.

At the heart of North Dakota's and the counties' complaints was the contention all section lines in North Dakota, including those within the Dakota Prairie Grasslands, are subject to a 66 foot right-of way for travel by the public arising from the acceptance of a grant for construction of public highways offered by a federal statute known as R.S. 2477. While R.S. 2477 was repealed under the Federal Land Policy and Management Act (FLPMA), plaintiffs contended that because North Dakota's acceptance occurred prior to the FLPMA enactment, the grant was preserved as a valid existing public right-of-way. The U.S. argued the plaintiffs' claims were barred by the 12-year statute of limitations under the Quiet Title Act (QTA) because the plaintiffs had sufficient notice of the U.S.' position that North Dakota had not accepted the R.S. 2477 grant to create rights-of-way for public travel along the section lines more than 12 years prior to their commencement of the quiet title actions.

The court ultimately agreed with the U.S. Specifically, the court found "the 1976/1977 Travel Plans for Sheyenne National Grassland and Little Missouri National Grassland and accompanying 'Public Notice' and signage, as well as the Public Notices issued by the Forest Service in 1982, 1984, and 1988, as to the Sheyenne national Grassland" were sufficient to put North Dakota on notice of the United States' claim to exclusive control over the 33 feet on either side of the section lines and trigger the QTA limitation period. As the plaintiffs' complaints were filed more than 12 years after the travel plans and public notices, the plaintiffs' claims were barred by the statute of limitations. (12-125 and 12-102, D.N.D.)

Photo credit: <https://news.virginia.edu/content/did-you-know-10-facts-about-declaration-independence>

Litigation Update

1. None to Report.

New Cases

1. Recreation and Land Use | Region 6

Plaintiffs filed suit in the District of Oregon challenging the Summit Trail System Project on the Ochoco National Forest claiming violations of the National Environmental Policy Act (NEPA) the Travel Management Rule, and the National Forest Management Act (NFMA) in *WildEarth Guardians et al. v. Forson et al.* The project proposes to establish a 137-mile trail system open to motorized vehicle use during certain times of year.

According to the complaint, the project violates NFMA because it **does not comply with the Ochoco National Forest Plan**. The complaint contends the project: 1) is inconsistent with the plan’s standards and guidelines for Rocky Mountain Elk and Mule Deer habitat; 2) fails to comply with the road density standards and guidelines; 3) fails to comply with the recreation opportunity spectrum; 4) fails to comply with standards and guidelines for recreation impacts on riparian habitat; and 5) fails to comply with the standards and guidelines for old growth and scabland areas.

The project, as per the complaint, violates the Travel Management Rule because it: 1) **fails to minimize damage** to soils, watersheds, vegetation and other natural resources; 2) **does not minimize harassment of wildlife** or significant disruption of wildlife habitat; and 3) **fails to minimize conflicts** among different types of forest uses.

Plaintiffs’ NEPA claims are based on the assertion the **project fails “to take a hard look at the direct, indirect, and cumulative impacts** of the Forest Service’s proposed actions.” Plaintiffs believe the Forest Service did not: 1) provide accurate baseline data to evaluate the environmental impacts of the project; 2) take a hard look at the impacts the project would have on gray wolves and elk; or 3) take a hard look at the cumulative impact of the project and other projects and activities near the project area. (17-1004, D. Or.)

Notices of Intent

1. None to Report.

Natural Resource Management Decisions Involving Other Agencies

1. None to Report.