Ecosystem Management Coordination

Court Decisions

Forest Management | Region 1

Alliance for the Wild Rockies v. Higgins, et al., (19-332-REB, D. ID.) Region 1 – On April 27, 2021 the District Court of Idaho issued a Memorandum Decision and Order remanding the Forest Service's Categorical Exclusion (CE) and Decision Memo for the **Hanna Flats project** on the **Idaho Panhandle NF** for the Agency to issue a supplemental Decision Memo. The plaintiffs allege violations of ESA, NFMA, HFRA, NEPA, and APA.

The Project involves various types of forest stand treatments over 6,814 acres: 6,598 acres are on NFS lands, 216 acres are privately-owned. The Project is estimated to take 5-10 Years to implement. The stated objectives are:

1. "Reduce the risk or extent of, or increase resilience to, insect or disease infestation;
2. Increase the quantity and maintain or improve the vigor (health of long-lived, drought-resistant, fire-adapted western white pine, western larch, and ponderosa pine trees;
3. Decrease the Quantity, and modify the arrangement, of hazardous forest fuels to reduce the current and future wildfire risk to people private lands, and resource values;
4. Contribute to the local economy and forest projects industry through timber production
5. Decrease the amount of road-related sediment reaching streams and reduce the risk of road culvert failures
6. Improve the current condition of the existing cross-country ski and snowshoe trail system in the project area and provide a new route to connect existing trail systems; and
7. Identify additional forest stands in the project area that are suitable and appropriate

The Court granted in part and denied in part the Parties' Motions for Summary Judgment stating:

> Claims 1, 2, 3, and 6 (Access Amendment claims under the ESA) were denied without prejudice. This means plaintiffs are allowed to bring these claims again in a new action.
>
> Claim 4 (HFRA/WUI) – The Court found the plaintiffs had standing and had exhausted their administrative remedies due to their voluminous comments which notified the Forest of their specific claim. The Court found the Forest Service violated HFRA because it failed to use the statutory definition of a wildland urban interface (WUI) and did not provide a map. The

Forest Service only stated the entire project area is in the WUI. The Court felt the intended purpose to state the Project was within the WUI was to avoid the requirement to prepare an EA (or EIS). The Court pointed out the differences between Bonner County's 2012 and 2016 Community Wildland Protection Plans definition of a WUI.

The Courts' summary:

> "In sum, it is unclear how the wildland-urban interface was defined here so that it could be confirmed that the Project sits within such an area and therefore qualifies for a categorical exclusion. See Native Ecosystems Council, 418 F.3d at 963 ("If the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable. It will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive."). At the very least, the statutory definition of wildland-urban interface was not used; as a result, the USFS violated HFRA, rendering its use of the categorical exclusion unlawful."

Claim 5 – The court determined that the Bonner County Community Wildfire Protection Plan is not a major federal action that requires the Forest Service to conduct NEPA.

The Project was suspended and the decision remanded (without vacatur) for the Forest Service to "issue a supplemental Decision Memo that clearly:

a. States how the wildland-urban interface is defined;
b. Applies the wildland-urban interface (using the supplied definition) to a map that concurrently and definitively depicts the Project area; and
c. Explains how the project area falls within the wildland-urban interface under HFRA

The Forest Service must provide a 30-day Notice preceding any beginning or resumption of Project-related implementation activities."

<u>Background:</u>

In August 2019, plaintiff filed a complaint alleging the Project: (1) violated the Access Amendment(s) in violation of the ESA, the National Forest Management Act ("NFMA"), the Healthy Forest Restoration Act ("HFRA"), the National Environmental Policy Act ("NEPA"), and the APA; and (2) the Forest Service failed to establish that the Project meets the definition of "wildland urban interface" in violation of both HFRA and NEPA. Plaintiff requested the decision be vacated or that implementation of the Project be enjoined pending compliance with the law.

The Forest Service reinitiated and completed ESA Section 7 consultation on the:

a. IPNF's LRMP in August 2020;

b. Project in October 2020; and
c. Completed a Supplemental Information Report in October 2020, which determined that an additional NEPA analysis was not necessary.

Grazing | Region 1

2-Bar Ranch Limited Partnership, et al. v. USFS, et al., (19-35351, 9th Cir.) Region 1- On May 6, 2021, the 9th Circuit Court of Appeals issued an Opinion reversing the District Court of Montana's partial grant of summary judgment to plaintiffs (case 18-33). Plaintiffs challenged the U.S. Forest Service's decision to apply the 1995 Riparian Mitigation Measures to the **Dry Cottonwood Allotment** in the **Beaverhead-Deerlodge National Forest.** The 9th Circuit also held that plaintiffs were not entitled to attorneys' fees under EAJA for their administrative appeal and remanded with instructions to grant summary judgment to the Forest Service. The NEPA was a 1995 Environmental Assessment issued in 1996 with a FONSI authorizing ten-year term grazing permits alleging of APA, NFMA, 2009 Forest Plan, NEPA.

The Court Finds:

1. "The panel held that the plain language of the 2009 Forest Plan supported the Service's application of the 1995 Riparian Mitigation Measures to the Dry Cottonwood Allotment, and to plaintiffs' grazing permits . . . . Because the 2009 Forest Plan was not ambiguous in any pertinent respect, the panel did not reach the Service's alternative argument that the panel should defer to its regulatory interpretation.
2. EAJA provides that an agency that conducts an adversary adjudication shall award to a prevailing party fees and other expenses incurred in connection with that proceeding. An agency proceeding is an "adversary adjudication" for EAJA purposes only if it is actually governed by the Administrative Procedures Act ("APA")'s formal adjudication requirements, as opposed to similar requirements of another statute or regulation. 5 U.S.C. § 554 delineates the scope of proceedings governed by the formal adjudication requirements of the APA. The panel held that the Service's administrative appeal process was not governed by 5 U.S.C. § 554, the administrative appeal here was not an "adversary adjudication" for purposes of EAJA, and the Service properly denied plaintiffs' request for attorneys' fees for their administrative appeal.

3/26/19 District Court Order

On March 26, 2019 the District Court of Montana issued a Memorandum and Order against the Forest Service concerning **a "suspension of period of use" for a term grazing permit**

regarding the Dry Cottonwood allotment (allotment) **on the Beaverhead-Deerlodge National Forest** (BDNF). A case where 2 of the 4 permittees filed suit against the Forest Service over the agency's management of the allotment. Specifically, the district court:

a. Denied the Forest Service's motion for summary judgment and granted plaintiffs' motion for Summary Judgment in part, finding that the BDNF's application of 1995 riparian mitigation measures does not comply with the 2009 BDNF Forest Plan, because the measures were not "designed specifically" for the allotment, they were only applied specifically to it.

b. Vacated the Forest Supervisor's finding that 1995 allowable use levels (AULs) apply to the grazing allotment in question and portions of notices of noncompliance finding plaintiffs in violation of those AULs; and

c. Remanded to the Forest Supervisor to address the applicability of EAJA to the 214 administrative appeal, specifically whether the Forest Service's position in the administrative proceeding was "substantially justified or that special circumstances make an award unjust."

Background

On May 31, 2018 the plaintiffs filed a complaint with the District Court of Montana against the Forest Service's "suspension of period of use" for term grazing permits on the BDNF. The plaintiffs' claimed the Forest Service violated: (1) NFMA by saying that the plan standards do not allow for approval of the Dry Cottonwood Allotment; (2) NEPA and FLPMA by modifying plaintiffs' term grazing permits to include an unsigned, undated, and otherwise invalid "allotment management plan" that is not consistent with the 2009 Forest Plan; (3) regulations and agency guidance by issuing the Notice of Non-compliance without first attempting to resolve the issues informally, failing to provide detailed notice of the alleged issues, and failing to provide an opportunity to comply; and (4) regulations and agency guidance by issuing a Notice of Noncompliance for the 2017 grazing season that fails to apply the allowable use standards required by law.

Litigation Update

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.

New Cases

Forest Management | Region 1

Alliance for the Wild Rockies, et al. v. Lannom, et al., (21-51-DLC, D. Montana) Region 1 – On April 28, 2021, plaintiffs filed a complaint in the District Court of Montana alleging violations of the administrative Procedures Act (APA), National Environmental Policy Act (NEPA), and the National Forest Management Act (NFMA) when authorizing or lack thereof the **Horsefly Project** and site-specific Forest Plan Amendment on the **Lewis and Clark portion of the Helena-Lewis and Clark National Forest**. The complaint alleges the project includes a Forest Plan Amendment to exempt the Project from two forest plan standards that protect elk hiding cover because the project violates those standards.

An environmental assessment (EA), DN/FONSI were signed on August 31, 2020; and on August 29, 2020, the Fish and Wildlife Service (FWS) Letter of Concurrence for the Forest Service's August 2020 Biological Assessment was signed.

The plaintiffs state the Project is located in the Little Belt Mountains 12 miles north of White Sulphur Springs, Montana encompassing approximately 21,000 acres to include 3,278 acres of commercial logging, 1,049 acres of clearcutting, modified clearcutting, non-commercial stand improvement, possible burning, and planting. It includes 40.7 miles of new road construction, 16.8 miles of reconstruction, 32.2 miles of reconditioning and 1.7 miles of relocating Forest Service system roads. It includes a Forest Plan amendment that exempts the Project from two Forest Plan standards and the project is expected to take 20 years to complete.

The Plaintiff Claims Alleged Violations:

1. The Forest Service's representations / omissions in the EA regarding road density and elk habitat violate NEPA and the Projects violates the Forest Plan in violation of NEPA, NFMA and the APA.
    a. The EA failed to take a hard look at the standards for road density provided in the Forest Plan.
    b. Agency failed to disclose and discuss recurring illegal road issue and its's impacts on the road density calculations and habitat effectiveness for elk.
    c. EA fails to provide a cumulative effects analysis of the cumulative effects on elk from the violation of hiding cover retention standards and the violation of road density limits.

d. EA unlawfully tiers to the Travel Plan because the Travel Plan has not been fully implemented and the road density, security, and habitat effectiveness calculations from the Travel Plan do not accurately represent the existing condition in the Horsefly Project area.

2. The Forest Service's failure to use the Forest Plan definition of old growth, and consequent failures to demonstrate compliance with Forest Plan old growth standards for retention and viability, violates NFMA, NEPA and the APA

   a. The Forest Service did not use the Forest Plan definition of old growth forest for the Project analysis and used the "Green et al. old growth definition" which is different.

   b. "Green et al. definition" of old growth leads to a different result than the use of the Forest Plan definition of old growth.

   c. Forest Service's failure to apply a forest plan old growth definition violates NFMA.

   d. Forest Service's failure to take a hard look at this issue in the EA and failure to disclose the Forest Plan old growth definition fully and fairly to the public in the EA violates NEPA.

3. The Forest Service's failure to disclose the decrease in active goshawk nesting territories to the public in the EA, and failure to comply with Forest Plan requirement to conduct an evaluation report if active nests declines by 10% in a year, violates NEPA, NFMA and the APA

   a. Forest Service's failure to prepare an evaluation report in response to the annual decline of over 10% in active goshawk nesting territories Forest wide in both 2017 and 2018, as well as the decline in the Project area nesting territories in 2019, violates NFMA.

   b. Forest Service's failure to incorporate known population data into the goshawk viability analysis, and by relying on habitat models alone causing the goshawk analysis to be misleading.

4. The site-specific Forest Plan amendment violates NFMA, NEPA, APA and the 2012 NFMA planning regulations

   a. The amendment decision in this case fails to meet all three requirements of the 2012 NFMA planning regulations.

   b. The site-specific Forest Plan amendment does not apply the best available science.

   c. Violations of NEPA:

      i. Forest Service failed to analyze the cumulative effects on elk from the Forest Plan amendment,

ii. violation of road density limits,

iii. violation of habitat effectiveness requirements,

iv. failure to provide any elk security areas in the Project area,

v. roads that were promised to be closed under the 2007 Travel Plan but have not been, and

vi. chronic recurring reasonably foreseeable road closure violations.

Background

On March 22, 2021 the USDA Forest Service, U.S. Department of Agriculture, U.S. Department of the Interior and U.S. Fish and Wildlife Service received a 60 Day Notice of Intent to Sue from Alliance for the Wild Rockies and Native Ecosystems Council pursuant to the citizen suit provision of the Endangered Species Act regarding the failure of the agencies to complete formal consultation for the Little Belts Travel Plan prior to implementing the Horsefly Project. Alliance for the Wild Rockies and Native Ecosystems Council requested that Forest Service withdraw the Horsefly Project decision or formally suspend the project in writing in a letter sent to all interested parties/members of the public, and address all legal violations listed prior to any implementation of the Project.

Forest Management | Region 1

Friends of the Clearwater v. Probert et al. (21-189, D. Idaho) Region 1 **-** On April 28, 2021, plaintiff filed a complaint in the District Court of Idaho challenging the approval of two logging projects known as "**End of the World**" and "**Hungry Ridge registration project**" on **the Nez Perce-Clearwater National Forests** for violations of the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Endangered Species Act (ESA) and Administrative Procedures Act (APA).

For the End of the World project an EA DN/FONSI was signed on January 25, 2021. For the Hungry Ridge project an EIS and ROD were signed on March 24, 2021 encompassing 49,565 acres, logging 7,144 acres

The plaintiff states the projects are 10-year logging projects to improve forest health; reduce potential risk to private property; maintain and improve wildlife habitat; and improve watershed conditions.

A Notice of Intent to Sue (NOI) was received on February 22, 2021 for End of the World Project and the Forest Responded on April 15, 2021; and the NOI for the Hungry Ridge Project was sent on April 15, 2021.

The Plaintiff Claims Alleged Violations:

1. End of the World: NEPA and APA Violations for Failure to Prepare an EIS

    a. The Forest Service's approval of the project is a major federal action affecting the quality of the human environment and requires the preparation of an EIS for the following reasons:

        i. The scale of the logging which includes 19,000 acres of total logging: 1,600 acres of regeneration harvest, twelve supersized logging openings up to 230 acres, logging in 364 acres of old growth forest, and associated road construction, road reconstruction, and road use;

        ii. The controversial unknown direct, indirect and cumulative impacts of the approved logging and other activities on wildfire risk, forest health, and climate change;

        iii. The controversial, uncertain direct, indirect, and cumulative short- and long-term impacts on wildlife, including the ESA listed grizzly bear, lynx, fisher, marten, wolverine, steelhead, salmon and Bull Trout, westslope cutthroat trout, and other sensitive species and/or management indicator species and their habitat.

2. and 5. End of the World and Hungry Ridge: NEPA and APA Violations for Inadequate DN/FONSI and EA and inadequate ROD and EIS

    a. Plaintiff claims the Forest Service violated NEPA implementing regulations by authorizing the project based on a defective EA and DN/FONSI and defective EIS/ROD without taking a "hard look" at potential impacts;

    b. The decisions are based on unsupported assumptions, errors, and omissions rendering them deficient under NEPA:

        i. Failing to disclose, consider, and factor in analysis studies showing controversial uncertain, negative effects of logging on wildfire, forest health and climate change;

        ii. Failing to use accurate and up-to-date baseline information to identify existing and replacement old growth in the Old Growth Analysis Areas at the sites of the projects;

        iii. Failing to disclose the limitations of the data and methods used to identify existing and replacement old growth in the Old Growth Analysis Areas at the sites of the projects;

iv. Artificially inflating the purported amount of "existing old growth" to include forest stands that are not existing old growth and/or to include areas where it is unknown whether they qualify as old growth;

v. Failing to respond to comments and objections;

vi. Failing to take a hard look at effects on ESA listed grizzly bear, lynx, fisher, marten, wolverine, steelhead and Chinook salmon, westslope cutthroat trout and other sensitive species and/or management indicator species and their habitat

3. and 6. End of the World and Hungry Ridge: NFMA and APA Violations for Failure to Comply with Forest Plan

   a. Failing to maintain and designate at least five percent of the forested acres in every Old Growth Analysis Area at the project site as "existing" and "replacement" old growth

   b. Failing to maintain at least ten percent of the forested acres across the Forest as old growth

   c. Failing to demonstrate a positive upward trend in fish habitat conditions before authorizing logging in Jungle and Cold Springs Creeks (End of World), and Merton, Trout, American Deer, and Upper Mill Creeks (Hungry Ridge).

4. and 7. End of the World and Hungry Ridge: APA and ESA Violations for No Effect Finding for Grizzly Bear

   a. "May affect" threshold is low and includes any possible effect. The noise, other disturbances, increase in road density, risk of human-bear conflict where the FWS recognizes grizzly may be present, where grizzly bears are expected to reestablish and support recovery and where one or more grizzly has been documented recently exceeds the "may affect" threshold.

   b. Forest Services's "no effect" determination and refusal to engage in ESA consultation is arbitrary and capricious.

Plaintiffs request the Court declare the Forest Service's approval of the End of the World EA/DN/FONSI and the Hungry Ridge EIS/ROD are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with NEPA, NFAM, ESA and/or the APA; Reverse, remand, vacate and set aside both decisions; Enter a temporary, preliminary, or permanent injunction; Award plaintiffs attorneys' fees and costs; Grant any additional relief the Court deems just and proper.

Forest Management | Region 1

Alliance for the Wild Rockies et al. v. Munoz, et al. (21-46, Dist. Montana) Region 1 - On April 28, 2021, plaintiffs filed a complaint in the District of Montana alleging violations of the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA) and the Roadless Rule when approving the Elk Smith Project on the Lewis and Clark portion of the Helena-Lewis and Clark National Forest.

A supplemental environmental assessment (EA) and Decision Notice were signed on January 26, 2021. The original EA was signed on November 1, 2019, withdrawn on June 10, 2020 and then the Supplement EA was issued.

The complaint states the project area is 24,220-acre area located in the 395,440-acre portion of the Bear-Marshall-Scapegoat-Swan Inventoried Roadless Area. The project consists of 10,329 acres of prescribed burning across 15 units. Implementation is to start in 2021 and continue for 5 years

The Plaintiffs Claim Alleged Violations:

1. AWR claims the forest service's approval of the tree-cutting in an Inventoried Roadless Area Violates NEPA, APA and the Roadless Rule.
    a. The project involves tree cutting in Units 1,2,7,9 and 11 for a total of 2,787 acres of inventoried Roadless Areas
    b. The Roadless Rule prohibits timber harvesting in Inventoried Roadless Areas
    c. No exception to timber harvesting in Inventoried Roadless Areas is applicable to the Project
    d. The Forest Service's approval of timber cutting in Inventoried Roadless Areas violates NEPA, APA and Roadless Rule

Background: In April 2020 lawsuit, the AWR claimed that the Forest Service's reliance on the exception at 294.13(b)(1)(ii) was arbitrary and capricious. The Forest Service withdrew the DN in June 2020 for more analysis and issued a final supplemental EA relying on 294.13(b)(1)(ii) to justify timber cutting in roadless areas and instead are now relying on 294.13(b)(2).

Notice of Intent

Nothing to Report

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Other Agencies

Mining | Region 1

NorthMet Project Permit to Mine and Application for Dam Safety (18-1952, 1953, 1958, 1959, 1960, 1961, Minn.) Region 1 - The Court of Appeals reversed the decision to grant the permits after concluding that the Department of Natural Resources (DNR) is required to hold a contested case hearing on the issues respondents raised in their petitions. The Appeal to the Supreme Court of Minnesota primarily concerned the contested case requirements in Minn. Stat. 93.483 as applied to the issues raised by respondents in their petitions for a contested case hearing on PolyMet's permit to mine application. On April 28, 2021, the Minnesota Supreme Court issued an opinion that found the allegation that the property owned by a person will be affected satisfies the requirement needed to file a petition for a contested case hearing. The Minnesota DNR has discretion on whether a hearing will aid the commissioner resolving a disputed material issue related to an application for a permit to mine. Statute requires the commissioner to set a definite fixed term of years for a mine permit. The court of appeals erred in reversing the dam-safety permits on the basis that a contested case hearing was ordered on the permit to mine because the two permits are governed by distinct statutory standards.

The location is in Minnesota, along the eastern flank of the Mesabi Iron Range, near the towns of Babbitt and Hoyt Lakes in St. Louis County.

Three main facilities are in question: A mine about six miles from Babbitt, an ore processing plant about six miles north of Hoyt Lakes and a transportation corridor connecting the two sites.

An Environmental Impact Statement (EIS) was issued in March 2016 with no objections and the acceptance of the Minnesota Environmental Policy which was not appealed.

Findings:

1. The Court of Appeals adopted an incorrect legal standard to evaluate the DNR's decision to deny the petitions for a contested case hearing. The court of appeals erred in its interpretation of Minn. Stat. 93.483, subd. 3(a) (2020).
2. The Court concluded that under substantial-evidence standard, the contested case hearing is required on the effectiveness of the proposed bentonite amendment for PolyMet's proposed tailings basin.
3. DNR did not abuse its discretion in denying the petitions for a contested case hearing because substantial evidence supports those decisions and also conclude that the court of

appeals was correct in reversing the decision go grant the permit to mine because the DNR erred by issuing the permit without an appropriate fixed term.

4. The Court further concluded the court of appeals erred in reversing the two dam-safety permits and affirm in part and reverse in part the decision of the court of appeals and remand to the DNR to conduct the contested case hearing required by this decision and to determine an fix the appropriate definite term for the permit to mine as necessary.

Oil and Gas | Region 1

Center for Biological Diversity et al. v. Spellmon, et al. (21-47, D. Montana) Region 1 - On May 3, 2021, plaintiffs filed a complaint in the District Court of Montana alleging the Army Corps of Engineers violated of the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), Clean Water Act (CWA) and Administrative Procedures Act (APA), by issuing **Nationwide Permit 12** (NWP 12) without adequately assessing its significant direct, indirect, and cumulative environmental effects in the State of Montana. NWP 12 activities cause environmental harm from oil and gas spills and global climate change.

The case involves the U.S. Army Corps of Engineers' (Corps) 2021 issuance of Nationwide Permit 12 (NWP 12), a general permit issued for oil and gas pipelines projects pursuant to Section 404(e) of the Clean Water Act. NWP 12 provides a streamlined process to permit oil and gas pipelines to cross rivers, streams, and wetlands. Projects using NWP 12 may proceed without undergoing comprehensive environmental review ordinarily required by Section 404(a) of the Clean Water Act, and there is no opportunity for public involvement when projects are approved under NWP 12.

By written notice to Defendants dated February 8, 2021, plaintiffs provided notice of intent to file suit. Defendants failed to respond or remedy the alleged violations.

The Plaintiff Claims Alleged Violations:

1. The Corps' reissuance of NWP 12 violated the Endangered Species Act, 16 U.S.C. §§1531-1544, and applicable regulations
    a. NWP 12 allows activities that result in direct harm to listed species from habitat loss and fragmentation, sedimentation and contamination of waters relied on by listed species, as well as indirect impacts associated with oil spills and climate change.
    b. The Corps has not ensured that project-specific consultation will occur for every NWP 12-authorized project that "may affect" listed species. The Corps relies on project proponents to submit a preconstruction notification (PCN) where listed species "might be" affected so that the Corps can determine whether project-specific consultation is necessary.

c. Failure to complete programmatic ESA Section 7 consultation with the Services on the issuance of NWP 12 constitutes that the NWP 12 program is not likely to jeopardize the existence of listed species or result in destruction or adverse modification of critical habitat.

2. The Corps' reissuance of NWP 12 violated the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., applicable regulations, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706

    a. Reissuance of NWP 12 was a major federal action that requires compliance with NEPA. Issued an EA/FONSI for reissuance of NWP 12, which constitutes the Corps' only NEPA document for an estimated 9,560 activities per year using NWP 12. The Corps will not prepare any further NEPA analysis for individual projects that are permitted or authorized by NWP 12.

    b. NWP 12 EA failed to adequately analyze: environmental impacts associated with the construction and maintenance of pipeline rights of way, climate change impacts of NWP 12, cumulative impacts of NWP 12, environmental justice impacts of NWP 12.

3. The Corps' reissuance of NWP 12 violated the Clean Water Act, 33 U.S.C. § 1344(e), applicable regulations, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706

    a. For many projects that proceed under NWP 12, an applicant is not required to submit a PCN or notify the Corps at all, and so the Corps does not have an opportunity to evaluate the adverse environmental effects of those projects.

    b. NWP 12 permits pipeline projects to use the NWP numerous times along a pipeline or utility route—even if there are high concentrations of water crossings in specific areas—with no mechanism to ensure impacts would be minimal.