

Ecosystem Management Coordination

Court Decisions

Forest Management | Region 6

Cascadia Wildlands, et al. v. Warnack (21-1227, D. Oregon) and **Forest Service Employees for Environmental Ethics v. Warnack, et al.** (21-1228, D. Oregon) **Region 6**—On November 5, 2021, the District Court of Oregon granted the plaintiffs' motion for preliminary injunction regarding the **Willamette 2020 Fires Roadside Danger Tree Reduction Project** on the Willamette National Forest. The district court indicated they are bound by the 9th Circuit Court of Appeals EPIC decision not allowing the use of Road Maintenance CE 4 for hazard tree removal greater than a tree length away from the roadway and for projects of large scale and scope. The court enjoined the Forest Service from proceeding with the project until an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is prepared. The court will allow the Forest Service to fell any tree at risk of imminent failure within striking distance of a road. Imminent failure was defined as "Trees or their parts are so defective or decayed that it would take little effort to make them fail. These trees or parts have a high probability of failure within one year." The Forest Service must leave any felled tree where it falls, with the exception that it may remove any tree that falls on a road to a safe location beside the road.

The project consists of timber sales (salvage) and road maintenance within a 176,000-acre area of the Willamette NF that burned in the 2020 Holiday Farm, Beachie Creek, and Lionshead Fires. The project includes the removal of danger trees along 404 miles of National Forest System roads.

The district court determined:

1. The scope of the project exceeded the scope of the road repair and maintenance CE 4.
2. The commercial logging allowed in this project does not remotely resemble grading or repaving roads, cleaning culverts, or removing brush near roads. "A CE of such limited scope cannot reasonably be interpreted to authorize a project such as the one before this court, which allows commercial logging of large trees from either side of hundreds of miles of Forest Service Roads."
3. Plaintiffs have demonstrated a likelihood of success on the claim that the Forest Service may not use the road repair and maintenance CE to avoid any NEPA review of the project.
4. The plaintiffs have established an imminent threat of irreparable harm absent an Injunction.
5. Until the 9th Circuit provides additional guidance, utilizing commercial logging operations to fell trees with little likelihood of imminent failure, is beyond the scope of the CE. The Forest Service must prepare an EA or an EIS.
6. Forest Service is enjoined from:
 - a. Felling any tree with a low likelihood of failure within 5 years.
 - b. Felling any tree with a likely failure potential.

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.

- c. Removing any felled tree pending the completion of an EA or EIS.
- 7. Forest Service “may fell” any tree at risk of imminent failure within striking distance of a road.

Background

Cascadia Wildlands, et al. v. Warnack, et al. (21-1227, D. Ore.)— On August 18, 2021 the plaintiffs filed a complaint in the district court against the Forest Service regarding the project. The plaintiffs claim the Forest Service violated the APA, NEPA and NFMA with approving the project. Specifically, the plaintiffs claim the Agency’s reliance on the repair and road maintenance CE 4 for the project determining the project poses no significant environmental effects individually or cumulatively. The plaintiffs also claim the project warrants the preparation of an EIS or EA, taking a hard look at the impacts of the listed Northern Spotted Owl, Salmonids and habitat classified as “Riparian Reserves”.

Forest Service Employees for Environmental Ethics v. Warnack, et al. (21-1228, D. Ore.)—On August 18, 2021 the plaintiff filed a complaint in the district court against the Forest Service regarding the project. The plaintiff claims the Forest Service did not complete an environmental review required under the NEPA, instead the Agency determined the project to be “road maintenance” and used CE 4. The complaint also challenges the Forest Service’s decision to log in riparian reserves, which the plaintiff claim is not allowed under the Northwest Forest Plan, because the Agency has not shown (1) fire has “degraded riparian conditions” and, 2) logging is “required” to meet Aquatic Conservation Strategy objectives.

Litigation Update

Nothing to Report

New Cases

Forest Management | Region 4

Wildlands Defense, et al. v. Tawnya Brummett, et al. (21-0425, D. Idaho) **Region 4**—On November 2, 2021 the plaintiffs filed a complaint in the District Court of Idaho against the Forest Service for violating the National Environmental Policy Act (NEPA) and Administrative Procedures Act (APA) with authorizing the **Sage Hen Integrated Restoration Project** on the Boise National Forest. The plaintiffs claim the Forest Service: (1) failed to prepare an Environmental Impact Statement (EIS) on the extensive 20 year project involving dozens of separate not-yet planned actions on tens of thousands of acres; (2) decision is based on a “conditioned-based management” approach which does not meet the minimum requirements of NEPA; subsequently the Agency failed to identify the specific actions that will be taken, inventory the vegetation and wildlife resources will be affected by the action, disclose the impacts that will be caused by the landscape-scaled vegetation treatments, or detail and evaluate the planned mitigation; (3) “no action alternative” does not meet the need for action based on the needs described in the EA and that the Agency did not consider any valid alternatives.

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.

According to the complaint the project may include up to 19,000 acres of commercial timber harvest spread among 13 to 18 separate logging projects, up to 83.1 miles of temporary roads, between 35,000 and 45,000 acres that be treated with prescribed fire, and 11,200 acres that could receive hazardous fuels reduction and non-commercial thinning.

The plaintiff claims:

Violation of NEPA and APA:

1. Forest Service failed to prepare and EIS evaluating the environmental impacts of the proposed action. The Forest Service's decision to authorize implementation of the proposed action over a 20-year period, was an "irreversible and ir retrievable commitment of resources" by the Agency to allow large scale vegetation treatment on virtually every acre of the landscape-level project area which will cause significant impacts to the environment.
2. The Forest Service's failure to adequately disclose the specific locations where actions will occur under the proposed Action or adequately analyze the environmental impacts of the proposed action. By using the "condition-based management" approach, the EA does not adequately address the direct, indirect, and cumulative effects of the project on the human environment. The EA does not provide a clear basis for choice among alternatives. The EA does not contain sufficient information to foster informed decision-making or informed public participation.
3. Because the Forest Service's "no-action alternative" does not meet the need for action based on the needs described in the EA, the Agency did not consider any valid alternatives.

Notice of Intent to Sue

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.