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Bush-Era Rules Abandoning Wildlife Protections Rejected by Federal Court, Again

Conservation groups hail victory for wildlife and public participation

Oakland, CA – The U.S. District Court for the Northern District of California on Tuesday issued a decision overturning the Bush administration's last attempt to weaken rules governing management of America's 155 national forests and 20 national grasslands. The Bush rules, issued April 21, 2008, repealed key protections for national forests mandated under the National Forest Management Act (NFMA).

The case was filed by a coalition of conservation groups represented by Earthjustice.

Read the decision here: http://www.earthjustice.org/library/legal_docs/nfma-order-09-06-30.pdf

The 2008 rule mirrored another issued by the Bush administration in 2005, which was also thrown out by a federal court. Like the 2005 rule, the 2008 rule eliminated mandatory protections in place since the Reagan administration that require the national forests to be managed to guarantee viable populations of all wildlife species, to preserve clean, healthy streams and lakes, and to protect diverse natural forests. The Bush rules also sought to reduce public participation in decisions about the management of our public forests.

In ruling on plaintiffs' claims under the Endangered Species Act and the National Environmental Policy Act, the court's opinion stated:

“[C]ourts have rejected USDA's argument that the programmatic nature of the plan development rule necessarily means that it will have no effect on the environment or protected species. The USDA has simply copied those rejected legal arguments in a new document and called it a 'Biological Assessment.' This is not sufficient to satisfy the [Endangered Species Act]'s requirements....Because the EIS does not evaluate the environmental impacts of the 2008 Rule, it does not comply with [the National Environmental Policy Act]'s requirements.”

Earlier versions of the forest planning rules contained enforceable standards that protected wildlife, water, and the forests. The earlier rules also provided opportunities for public involvement and required analysis of environmental impacts of forest plans on the national forests, impacts that result from plan decisions regarding logging levels and other extractive uses of forest resources.

“America’s diverse wildlife that inhabits our national forests will be safer because of this ruling, which will require forest managers to look out for the welfare of every species,” said Earthjustice attorney Trent Orr. “The Bush administration tried twice to eliminate vital protections for all wildlife living in the national forests. Fortunately, America’s strong environmental laws, and groups willing to fight to enforce them, kept them from succeeding both times.”

The court found that the Forest Service violated the National Environment Policy Act by approving the new regulations based on a faulty environmental impact statement that failed to analyze adequately the environmental impacts of the new regulations and violated the Endangered Species Act by failing to examine the effects of eliminating wildlife protection standards on protected species.

The new decision represents the second time Bush NFMA rules were rejected by the courts.

“Our national forests and grasslands belong to all Americans and should be managed that way, not just for the benefit of narrow special interests,” said Peter Nelson, director for federal lands of Defenders of Wildlife. “The Bush administration left a legacy of little to no protection for fish, plants and wildlife and the important values they provide. We’ve got a lot work to do to get our forests back on track. The court’s decision overturning the Bush regulations clears the way for us to get started.”

“Today’s decision offers an opportunity to restore traditional safeguards to America’s forests and wildlife,” said Sierra Club executive director Carl Pope. “The Bush administration attempted a wholesale gutting of the rules that have protected America’s national forest system for years. Weakening these regulations would have opened our last wild forests to unchecked logging and industrial development, with no regard for the impacts on wildlife, the environment, or recreational users. We’re pleased that the court has recognized the importance of protecting our forests for future generations.”

Earthjustice represented Defenders of Wildlife, Sierra Club, The Wilderness Society, and Vermont Natural Resources Counsel.

A separate lawsuit known as Citizens for Better Forestry v. U.S. Department of Agriculture challenged the same rule, and was consolidated with this litigation.

BACKGROUND:

Congress passed the National Forest Management Act in 1976 to reform the Forest Service and to ensure that the agency give due consideration to non-timber resources, such as recreation, wildlife, and water. The NFMA regulations targeted by the Bush administration include the critical legal requirement that national forests be managed to maintain viable wildlife populations. This rule supports populations of popular game species such as elk, moose, and black bear, and helps keep sensitive and rare species off the endangered species list by identifying and correcting wildlife population declines before species become imperiled.

The Reagan administration adopted this wildlife viability protection in response to declines in the population and range of many species caused by the routine approval of logging and other development projects that did not take the need to conserve wildlife into account. The Bush administration's attempt to repeal the NFMA wildlife protections threatened a future in which rare species would once again dwindle and disappear from the national forests.

The National Forest Management Act also requires the Forest Service to allow citizens to participate fully in forest management decisions.