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Groups file lawsuit challenging new planning rule

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Tuesday, August 14, 2012

More than a dozen logging, ranching and off-highway vehicle (OHV) groups yesterday filed a lawsuit challenging the Forest Service's new planning rule, the latest move in a decadelong legal battle over management of the nation's 193 million acres of forests and grasslands.

The complaint filed in the U.S. District Court for the District of Columbia argues that the Forest Service overstepped its authority by requiring that new forest plans provide "ecological sustainability" and "ecosystem services" and use best available science in decisionmaking, among other charges.

The lawsuit is the first, and possibly not the last, to challenge the Obama administration's rewrite of a planning rule that has been dogged by lawsuits since 2000.

Groups including the American Forest Resource Council, National Cattlemen's Beef Association and BlueRibbon Coalition -- an OHV users group -- said the new planning rule flouts the agency's congressional mandate to provide for multiple uses such as logging, ranching and motorized recreation.

"The new planning rule would represent a significant departure from the multiple-use mandate which is supposed to be the overriding mission of the Forest Service," said Bill Imbergamo, executive director of the Federal Forest Resource Coalition, one of the 13 plaintiffs in the case. The Washington, D.C.-based group represents timber companies that purchase 75 percent of logs sold from federal forests.

"The rules would elevate species-by-species management, an approach which is a proven failure, over other objectives of the Forest Service," Imbergamo added. "The agency left us no choice but to file this case."

The groups argue that the agency violated its founding statute, the Multiple-Use Sustained-Yield Act (MUSYA) and the National Forest Management Act (NFMA), which requires the Forest Service to develop a planning rule. The agency declined to comment on the lawsuit.

The lawsuit asks the court to overturn a planning rule that followed more than two and a half years of public meetings; consultation with federal, state and tribal officials; and more than 300,000 public comments.

Finalized in March, the rule governs how the agency revises land management plans at each of its 175 national forests and grasslands. The plans, more than half of which are out of date, determine where and how the agency permits activities including logging, oil and gas development, grazing, motorized recreation, trails and watershed restoration.

Previous attempts to update the rule in 2000, 2005 and 2008 drew lawsuits from the Center for Biological Diversity and other environmental groups and were either enjoined or abandoned, leaving the Reagan administration's 1982 planning rule in place.

The Obama administration rule, which emphasizes watershed restoration, drew praise from major environmental and sportsmen's groups, former Forest Service Chief Dale Bosworth, and Sen. Jeff Bingaman (D-N.M.), among others. Agency officials said the new rule will make forest planning faster, less costly and more collaborative (E&ENews PM, March 23).

But forest users in their lawsuit claim the agency exceeded its authority by requiring forest plans to provide ecological sustainability and species protections that exceed existing law. Critics of the rule have long argued it will become a magnet for special interest lawsuits that will crimp economic development on public lands.

"The [rule establishes] 'ecological sustainability' as the overriding objective of national forest management, while relegating 'social and economic sustainability' to an inferior and insignificant position," the complaint reads.

Imbergamo of the Federal Forest Resource Coalition said he was "perplexed" at the new planning rule, given that the Forest Service has taken concrete steps to increase the pace and scale of forest management. "Certain aspects of the rule would make it harder for the Forest Service to do the land management it knows it needs to do," he said.
In addition, the new rule exceeds NFMA's mandate to maintain species diversity by requiring forest plans to "contribute to the recovery of every federally listed species found on the forest, to seek to avoid listing of candidate species, and to seek to maintain viable populations of all species of conservation concern," the groups argue.

The rule also gives scientists "improper influence" by requiring "best available science" to be used and documented in the forest planning process, a violation of MUSYA, the lawsuit argues.

"We are disappointed that the rule abandons the Forest Service's hard-fought legal victories, which held that judges are to defer to the professional expertise of the local forest managers experienced with local conditions," said Tom Partin, president of AFRC, which is based in Portland, Ore. "The rule undermines local on-the-ground knowledge by imposing a new 'best science' requirement over which no one, not even scientists, can ever agree."

Lastly, the lawsuit argues the rule failed to include an exception in NFMA allowing salvage timber sales and too narrowly defined "sustainable recreation," and that the Forest Service failed to allow adequate public comment on changes to the draft rule, among other charges.

But Taylor McKinnon, public lands campaigns director for the Center for Biological Diversity, said the lawsuit is a predictable response from groups that have long argued national forests are primarily for resource extraction, an argument he said is flawed.

"It ignores the deep legislative history, beginning with the Lacey Act, and continuing through the MUSYA, NFMA, [Endangered Species Act] and other laws, that impose implicit and explicit requirements for ecological sustainability -- by way of things like watershed and biodiversity

protection -- on the national forests," McKinnon said. "Only the kaleidoscope of antiquated utilitarianism could yield such a distorted and outdated view of our national forests."

McKinnon said he opposes the planning rule because it gives the Forest Service too much discretion to determine which species receive special protections.

"To a large degree, the new rule leaves biodiversity protection to the discretion of local foresters," he said. "We're not at all happy with the rule, and we see it as a policy failure, at least from a biodiversity standpoint."

McKinnon said that CBD is still mulling whether to challenge the rule in court but that such a move would likely not occur until new forest plans are crafted. The agency in February said forests in Alaska, California, Idaho, New Mexico and Puerto Rico will be the first to implement the new rule.

"It's quite possible that as the rule is implemented and its deficiencies become thus apparent, that that would provide an opportunity to challenge," McKinnon said.

The rule remains broadly supported by conservation groups including the Wilderness Society, the Sierra Club, Defenders of Wildlife and the Theodore Roosevelt Conservation Partnership.

"Not everyone got what they wanted," said Joel Webster, director of the TRCP's Center for Western Lands. "But throughout the process, collaboration was heavily emphasized." Webster said the rule's impact will not be known until it is implemented on the ground. He urged stakeholders to participate in the planning process.