

TO: SFFC Supporters  
FR: Sam Hitt  
DT: June 15 2020  
RE: Appeals Court rules in favor of the Forest Service

In a disappointing but not unexpected decision, the 10th Circuit Court of Appeals ruled on June 12 that the Forest Service acted legally in approving the Hyde Park and Pacheco Canyon projects. The opinion written by Chief Judge Tymkovich found Forest Service did not have to do an in-depth environmental review when it proposed clearing and burning nearly 4000 acres of mostly roadless wilderness-quality forests above Santa Fe.

The good news is that a September injunction issued by a Federal District Court Judge in Arizona continues to halt the nearly 2000 acre Hyde Park project for failure to provide adequate safeguards for the endangered Mexican spotted owl population. Most of the Hyde Park project is owl restricted habitat. The Forest Service has also suspended all burning during the pandemic including burns planned for Hyde Park, Pacheco Canyon and the Santa Fe Municipal Watershed.

The court rejected our argument that an “extraordinary circumstances” review was required by the National Environmental Policy Act (NEPA) for these and other expedited projects. The position adopted by this court runs counter to other appeal court rulings and even the Forest Service’s own interpretation. In 2014 immediately after Congress attached a controversial amendment to the Healthy Forest Restoration Act (HFRA), the Forest Service reassured the public it would proceed with priority clearing and burning projects in roadless forests only after doing an extraordinary circumstances review.

In a similar case in California, the 9th Circuit Court of Appeals assumed that an extraordinary circumstances review was required. However, the court here rejected this evidence saying that the amended HFRA didn’t explicitly state such a review was required for these types of projects. Legal justification for their ruling was found, in part, by citing a law review article by the late Supreme Court Judge Antonin Scalia.

More troubling was the court’s view of NEPA’s requirement to analyze cumulative impacts. These are the effects to wildlife habitat, old growth and roadless forests of multiple slash and burn projects envisioned over vast areas. The Forest Service here and elsewhere avoids acknowledging a host of devastating impacts that become evident over time by limiting its analysis to isolated segments of the larger plan.

The court determined there was not a coherent plan with potentially significant cumulative impacts despite clear evidence that Hyde Park and Pacheco Canyon were the first of many similar actions planned for the forests above Santa Fe. Unfortunately, the massive Santa Fe Mountains Forest Resiliency Project in this area was proposed after the case was filed.

In addition, the court found that the Forest Service would likely maintain and enhance old growth despite acknowledging that up to 30 percent of the larger trees may succumb to deliberate burning which occurs as often as once a decade. As to the Forest Service’s obvious failure to set

aside the required 20 percent of the area for old growth, the court reasoned that old growth could still be set aside in the larger 100,000 acre landscape (the scoping letter for the Santa Fe Mountains project doesn't mention old growth set asides and I'm not aware of any old growth set asides on the Santa Fe National Forest). In making its ruling the court ignored evidence in the record showing a preference by the agency for younger forests.

Lastly, the court dismissed impacts to Northern Goshawk and Abert's Squirrel populations, both sensitive species requiring dense forest habitat. The commonly used Forest Service assumption that the adverse impacts of removing 90 percent of the ponderosa pine over 9 inches in diameter would be offset by increased future tree growth was accepted uncritically.

In addition to Wild Watershed, plaintiffs included Dr. Ann McCampbell, Jan Boyer and the Multi Chemical Sensitivities Taskforce. A hearty thanks to all for their many years of determined advocacy and to our dedicated attorney Tom Woodbury.

As we have since 2005, we will continue to advocate Wilderness protection for these roadless forests and raise public awareness to on-going Forest Service mismanagement.

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