Sixth Circuit Sours on Sugar Maple Cutting

In 1986, the United States Forest Service (Forest Service) issued its Forest Plan for the Ottawa National Forest, as required by the National Forest Management Act of 1976. The Plan divided the forest into sixteen management areas and set forth a management strategy for each area. For "Area 2.1," the Plan envisioned yearly logging activities of 1,440 acres of clear-cutting and 2,800 acres by "selection cutting," which removes a pattern of trees rather than an entire section of trees, leaving the forest canopy intact. However, the Forest Plan also provided that there would be no restriction on the acreage of "uneven-aged sugar maples" that could be selectively cut within any ten-year period (referred to below as the "sugar maple provision"). The Plan additionally included an "Allowable Sale Quantity" (ASQ), restricting the amount of timber that could be sold to 780 million board feet in a ten year period.

In 1997 and 1998, the Forest Service considered authorizing the "Rolling Thunder" project, involving the selective cutting of 1,055 acres of northern hardwood trees in Area 2.1. As required by the National Environmental Policy Act (NEPA), the Forest Service published an Environmental Assessment (EA) concerning the project and solicited public comment. Northwoods Wilderness Recovery, Inc. (Northwoods), an environmental group, objected to the project because yearly selection cutting in Area 2.1 was already almost double the general amount that had been envisioned in the Forest Plan. Nonetheless, the Forest Service issued a Finding of No Significant Impact (FONSI), paving the way for approval of the project.

On February 11, 1999, the Forest Service authorized the timber cutting project and Northwoods filed an administrative appeal with the Forest Service. After an appeals officer affirmed the Forest Service's decision, Northwoods appealed to the United States District Court for the Western District of Michigan. In its complaint, Northwoods alleged that, in approving

the selective cutting, the Forest Service: (1) violated the terms of the Forest Plan; (2) failed to adequately assess the environmental impact of the approved logging; (3) failed to adequately assess the impact of the approved logging on several species of birds and wildlife; and (4) failed to issue an Environmental Impact Statement (EIS) when one was required by law.

The District Court found that Northwoods had failed to carry its burden of proof and dismissed the case. Specifically, the court observed that, although the Forest Plan contained an overall annual limit on logging, the Plan also allowed unlimited selection cutting of sugar maples. Because Northwoods failed to show that Area 2.1 contained trees *other* than sugar maples, and the record indicated that "sugar maples [would] be the dominant type of tree harvested" in the selective cutting, the Rolling Thunder project was consistent with the Forest Plan. Northwoods's case was dismissed, and Northwoods appealed to the Sixth Circuit Court of Appeals (Sixth Circuit).

On appeal, Northwoods advanced two main arguments: (1) that the overall logging acreage estimates in the Forest Plan establishes a ceiling on the amount of logging that can be authorized, and the Rolling Thunder project would exceed that amount; and (2) that the sugar maple provision was not subjected to NEPA analysis, and therefore, is not a valid part of the Plan. The Forest Service argued that the ASQ, which was not exceeded, was the only limitation on logging contained in the Plan, and that the sugar maple provision was valid.

The court agreed with Northwoods that the overall logging acreage numbers were a limit on logging activities under the Forest Plan. The court observed that to hold that the Forest Service could authorize whatever logging it wanted, as long as the amount *sold* was below a certain threshold, would render most of the Forest Plan—dealing with wildlife, water quality, and recreational opportunities, among other issues—irrelevant, because unlimited logging could

severely impact those other environmental issues. Therefore, the court held that the Forest Plan limited logging in two ways, through both the ASQ *and* the total acreage numbers.

The court also agreed with Northwoods that the environmental impacts of the sugar maple provision were not adequately addressed, observing that the "Forest Service never demonstrated, by citing either the Plan or the Environmental Impact Statement, that the environmental impacts of the current level of selection logging ever was analyzed, much less unlimited selection cutting of sugar maples. No meaningful consideration was given to unlimited cutting of this species of hardwood, and it is unclear how, by whom, or for what reason the sentence was inserted."

Furthermore, the court held that *all* projects, whether in conformance with the Forest Plan or not, must be preceded by or accompanied by an EIS that analyzes the environmental impact of the project(s) in order to meet the requirements of NEPA. Because approval of the Rolling Thunder project did not include an EIS, the court reversed the lower court's decision and remanded the case with instructions to enter judgment in favor of Northwoods.

Northwoods Wilderness Recovery, Inc. v. United States Forest Service , 323 F.3d 405 (6th Cir. 2003).

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