

## ***Environmental Group Lacks Standing to Bring Suit Against Forest Service***

A federal court has dismissed a lawsuit brought by an environmental group against the United States Forest Service (Forest Service) and several of its officials regarding alleged failures to adhere to federal law concerning management of the Ottawa and Hiawatha National Forests. The Center for Biological Diversity (Center) brought suit against several federal officials, alleging that the Forest Service had violated federal laws by failing to observe procedural requirements in the Wild and Scenic Rivers Act (WSRA), the National Forest Management Act (NFMA), and the National Environmental Policy Act (NEPA), as those statutes related to Forest Service activities in the Ottawa and Hiawatha National Forests. The United States District Court for the Western District of Michigan held that the Center lacked standing to sue for those violations and dismissed the suit.

### **WSRA VIOLATIONS**

The WSRA gives Congress the authority to designate any river as “wild,” “scenic,” or “recreational.” Once a river is designated as such, the WSRA requires the Forest Service to conduct its activities around the river “as to protect and enhance” its wild, scenic, or recreational values. The WSRA also imposes two procedural obligations on the Forest Service concerning such rivers. First, the Forest Service must “establish detailed boundaries” for each designated river zone within one year of the date of designation. Until publication of the detailed boundaries, the WSRA establishes one-quarter mile boundaries measured from the ordinary high water mark on either side of the river. Second, the Forest Service must prepare a “comprehensive management plan” (CMP) for each designated river segment that will “provide for the protection of river values” within three fiscal years of the date of designation. At the time

of the suit, the Forest Service readily admitted that it had not established boundaries or CMPs for the designated rivers in the Ottawa and Hiawatha Forests as required by the WSRA.

### **NFMA VIOLATIONS**

The NFMA requires the Forest Service to devise an integrated Land Resource Management Plan (“LRMP”) for each National Forest, and requires public involvement in the development, review, revision, and amendment of those LRMPs. The Center contended that the Forest Service violated the NFMA when it failed to amend or revise the Ottawa and Hiawatha Forest LRMPs to adopt and/or implement CMPs for the designated rivers in those forests.

### **NEPA VIOLATIONS**

The NEPA requires the Forest Service to prepare an Environmental Impact Statement (EIS) for any proposed major federal action that may significantly affect the quality of the environment. The EIS must include an analysis of any adverse environmental impact that cannot be avoided should the project be implemented, alternatives to the proposed action, and any irreversible and irretrievable commitment of resources which would be involved if implemented. To determine whether a proposed action may significantly affect the quality of the environment and require an EIS, the agency may first prepare an Environmental Assessment (EA). In certain limited circumstances, the agency may authorize a Categorical Exclusion (CE), thereby excluding the proposed project from the NEPA’s EIS and EA requirements.

The Center claimed that “[c]reating Comprehensive Management Plans and establishing detailed river corridor boundaries constitute major federal actions that will significantly affect the quality of the human environment,” and, therefore, the WSRA requirements triggered NEPA’s EIS and EA requirements. Because the Forest Service did not create CMPs or establish

boundaries as required under the WSRA, it also failed to prepare an EIS, EA, or a CE for those activities, and, therefore, the Center argued, violated NEPA.

### **THE ENTBR'S MOTION FOR JUDGMENT BEFORE TRIAL**

The Center moved for judgment before trial on the WSRA claims, requesting an injunction requiring the Forest Service to comply with the WSRA requirements. In support of its motion, the group offered nine affidavits from group members detailing detrimental logging and road-building activities that were ongoing near the designated rivers, and offering opinions on the possible detrimental effect of the Forest Service's failure to create CMPs and designate the proper river boundaries so as to protect the rivers from such activities.

In considering the group's request for an injunction, the court observed that "[i]njunctive relief is an extraordinary remedy, which does not automatically follow a violation of a procedural environmental statute;" in addition to proving a violation of the WSRA, the Center also must show "the likelihood of irreparable harm to [its] members as a result of the violations." The burden was on the Center to show that its members were threatened with "actual and imminent," not speculative or hypothetical, injury.

The court held that the Center had failed to meet that burden. The affidavits offered by the Center, the court observed, did not contain specific allegations about how the members would be injured by the Forest Service's violations; instead, they "almost uniformly contain vague and speculative references to general environmental damage that could occur" as a result of those violations. This "theoretical possibility of harm," the court held, fell "far short of a showing of actual irreparable harm required for injunctive relief." Thus, the court denied the Center's motion.

### **THE OFFICIALS' MOTIONS FOR JUDGMENT BEFORE TRIAL**

The Forest Service officials also moved for judgment before trial, requesting that the Center's claims be dismissed because it lacked standing to sue. In order to have standing, the Center had to show: (1) that it or its members had or would suffer an individualized, concrete harm as a result of the WSRA violations (injury in fact); (2) a causal link between that harm and the officials' actions (causation); and (3) that there is a likelihood that the requested relief would ameliorate the alleged harm (redressability).

The court observed that the United States Supreme Court has held that, in the context of environmental laws, the injury in fact requirement is satisfied when members of an environmental group "aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." Citing other precedent, however, the court also noted that the Center had to "do more than assert generalized allegations...which could *conceivably* demonstrate use of the affected land; rather, [the Center] must set forth specific facts showing injury from use of the affected land."

The Center asserted that in a 2001 decision, *Heartwood, Inc. v. United States Forest Service*, the court had recognized that "generalized allegations of use may suffice" for purposes of the injury-in-fact requirement "where the action alleged to cause the injury will affect a large area or has general application to a large area." The court pointed out, however, that its statement in *Heartwood* did not apply in situations where alleged harm would be "contained and localized." In the court's opinion, the Center's alleged injury was "contained and localized" because it related to specific activities around the designated rivers. Therefore, *Heartwood* did not authorize the group's hypothetical and generalized affidavits concerning potential injury. Because the Center did not provide facts showing specific injury, it did not meet the injury-in-fact requirement, and thus, lacked standing.

The court also observed that the Center’s “vague and conclusory statements regarding the impact of the absence of CMPs and detailed river boundaries” would likewise fail to satisfy the causation and redressability requirements. Concerning causation, the Center failed to address whether there would be any difference in the Forest Service’s activities if it *had* complied with the requirements. In other words, unless the alleged harmful activities would be prohibited by the WSRA’s requirements, then the Forest Service’s failure to comply with those requirements did not cause whatever injury was alleged. Because the Center failed to establish that link, it did not meet the causation requirement. Concerning redressability, the court merely noted that the vague hypothetical statements offered by the Center did not explain how or why the proposed injunction would cure the alleged harm. Therefore, the Center also failed to meet the redressability requirement.

Because the Center failed to meet the requirements for standing, the court dismissed the suit against the Forest Service officials.

*Center for Biological Diversity v. Lueckel*, No. 2:01-CV-194 (W.D. Mich. 2002)

H. Kirk Meadows