

## ***Court Refuses to Block Tree Cutting***

The U.S. District Court for the Western District of Michigan has granted judgment before trial to the U.S. Forest Service, finding that an environmental group failed to provide facts to support its arguments that the Forest Service had not followed applicable procedures in approving the selective cutting of a national forest.

### **Facts**

On February 11, 1999, the United States Forest Service (Forest Service) authorized the selective cutting of 804 acres of northern hardwood trees in the Ottawa National Forest. Northwoods Wilderness Recovery, Inc. (Northwoods), an environmental group, filed an administrative appeal with the Forest Service. After an appeals officer affirmed the Forest Service's decision, Northwoods appealed to the District Court. In its complaint, Northwoods alleged that, in approving the selective cutting, the Forest Service: (1) violated the terms of a 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 when one was required by law.

### **Violation Of The Forest Plan**

The National Forest Management Act (NFMA) requires the development of strategic plans for the management of each unit of the Forest Service. In 1986, the Ottawa National Forest issued its plan (forest plan), which divided the forest into several Management Areas (MAs), and specified strategies for each MA.

The plan for the MA at issue in the case provided for the selective cutting of a maximum average of 2800 acres of trees per year. The Forest Service's decision would result in the cut acreage exceeding this average. As a result, Northwoods argued that the Forest Service had violated the terms of the NFMA.

The court observed, however, that the forest plan 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. To avoid dismissal of its claim, Northwoods would have had to point to facts showing that the MA contained trees *other* than sugar maples. Northwoods failed to provide any such information. In fact, the record indicated that "sugar maples [would] be the dominant type of tree harvested" in the selective cutting. Therefore, the court dismissed the claim relating to violation of the forest plan.

### **Failure To Examine Impact On The Environment**

The National Environmental Policy Act (NEPA) requires all federal agencies to provide an Environmental Impact Statement (EIS) detailing the environmental impact of any "major Federal action significantly affecting the quality of the human environment." Federal regulations allow an agency to conduct an Environmental Assessment (EA) in order to determine whether an EIS is necessary.

The Forest Service performed an EA and issued a Finding of No Significant Impact (FONSI), finding that the selective cutting would have no significant impact on the environment. Northwoods claimed that the Forest Service had not adequately considered the potential environmental impacts in the EA and FONSI, and thus, had violated NEPA.

The court noted that, in analyzing an agency's final decision, it would set aside the agency's determination only if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law....This is a difficult standard for [Northwoods] to satisfy, and they have not done so here." The Forest Service had in fact conducted a detailed examination of the potential environmental impact of the selective logging. Thus, Northwoods had not met its burden of proof, and its claim relating to environmental impact was dismissed.

### **Failure To Examine Impact On Birds And Wildlife**

Northwoods also claimed that the EA inadequately assessed the impact of selective logging on four species: the northern goshawk, the American bittern, the red-shouldered hawk, and the Canada lynx. Northwoods alleged that with respect to each species, the Forest Service had made erroneous conclusions and relied on insufficient and/or faulty data.

The court found, however, that the Forest Service had specifically addressed each species at issue, and had used reliable studies to form its conclusions, and thus dismissed Northwoods's claim relating to impact on birds and wildlife. The court noted that Northwoods was "[b]asically...asking the Court to accept their scientific studies and reject those relied upon by [the Forest Service]. 'When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts'."

### **Decision To Not Issue An Environmental Impact Statement**

Finally, Northwoods attacked the Forest Service's decision that an EIS was not necessary, alleging that the EA had failed to consider several factors required to be considered by federal regulations.

The court noted the holding of the Sixth Circuit Court of Appeals that “[a]n agency decision, based on an EA, that no EIS is required, can be overturned only if it is arbitrary, capricious, or an abuse of discretion,” which placed a heavy burden of proof on Northwoods, requiring it to show that the Forest Service’s decision was clearly wrong. The court further observed that, in contrast to Northwoods’s claim that the Forest Service had failed to consider required factors, the EA contained a detailed analysis of those factors. Because Northwoods did not provide any other reasons why the decision was wrong, it failed to present facts to support its claim, and its claim was dismissed.

Because all of Northwoods’s claims were dismissed, the court granted judgement before trial in favor of the Forest Service.

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