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Ozark-St. Francis National Forest/Prescribed Burn/Logging/National Environmental Policy Act: Buffalo River Watershed Alliance Files Action Against United States Forest Service

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The Buffalo River Watershed Alliance (“BRWA”) filed a February 21st Complaint for Vacatur of Illegal Agency Decision, Declaratory and Injunctive Relief (“Complaint”) against the United States Forest Service (“Forest Service”) alleging violations of the National Environmental Policy Act (“NEPA”). See Case No. 3:23-cv-03012-TLB.

The Complaint was filed in the United States District Court for the Western District of Arkansas addressing what is denominated the Robert’s Gap Project (“Project”) which is stated to consist of:

. . . a prescribed burn, logging, and chemical herbicide treatment in the Ozark-St. Francis National Forests within the Headwater Buffalo River watershed (USGS hydrologic unit code 1101000502).

The cited federal statute (NEPA) requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of the environmental impacts of proposed actions and reasonable alternatives to those actions.

NEPA requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document or a supplemental version (Supplemental Environmental Impact Statement [SEIS]) is only triggered in the event of a major federal action or an additional action that will significantly affect the environment.

NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an EIS or SEIS in certain defined instances. As a result, NEPA does not require a certain alternative or to meet a particular standard. Nevertheless, in the event NEPA’s procedural requirements are not met, actions of a federal agency can be enjoined.

The Complaint alleges that a Forest Service decision approves the prescribed burning, logging, and woodland herbicide treatment of approximately 40,000 for forest within the headwaters of Buffalo River Watershed. This is alleged to include the known habitat of the Indiana bat, an endangered species.

Implementation of the project will (as alleged) cause:

. . . loss of Cedar, Oak, and Pine trees, destruction of old growth forest as eighty six percent of the Project contains forest stands 70 years old or more, wildlife habitat, and potential degradation of water quality.

Based on these alleged facts BRWA requests that the United States District Court order enter and Order:

1. Declaring that the Forest Service's DN/FONSI for the Robert's Gap Project violates NEPA, 42 U.S.C. § 4321 et seq., and declaring that the Service's failure to prepare a Supplemental Environmental Assessment ("SEA") or Supplemental Environmental Impact Statement ("SEIS"); to account for significant new circumstances or information also violates NEPA, and are arbitrary, capricious, an abuse of discretion, and/or not in accordance with law under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A) and are a continuing failure to act under § 706(1);
2. Declaring that the Forest Service must conduct either a SEA or SEIS;
3. Vacating and setting aside the Forest Service's illegal DN/FONSI as an illegal agency action under the APA;
4. Permanently enjoining the Forest Service from implementing the Robert's Gap Project until the agency complies with NEPA;
5. Enter preliminary and permanent injunctive relief to ensure that the Forest Service complies with NEPA, and specifically to ensure that the Forest Service and its agents take no further actions toward proceeding with the challenged Robert's Gap Project until they have complied with NEPA;
6. Awarding Plaintiff its reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
7. Grant such further relief as the Court deems just and equitable.

A copy of the Complaint can be downloaded [here](#).