

Livestock Grazing/National Environmental Policy Act: Federal Appellate Court Addresses Challenge to U.S. Forest Service Allotments



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

02/20/2025

The United States Court of Appeals, 9th Circuit (“9th Circuit”) addressed in a February 11th Memorandum a challenge to a United States Forest Service (“Service”) action pursuant to the National Environmental Policy Act (“NEPA”). See *Western Watersheds Project v. Gary Washington, et. al.*, 2025 WL 457098.

The question addressed was whether the Service complied with NEPA when it reauthorized livestock grazing on allotments in the Apache-Sitgreaves and Gila National Forests.

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

The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to prepare this document is only triggered in the event of a major federal action that will significantly affect the human environment. As opposed to an EIS, which a much more detailed document, an Environmental Assessment (“EA”) provides sufficient evidence and analysis for determining whether a finding of no significant impact or an EIS should be prepared.

NEPA differs from action forcing 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 the previously referenced procedural requirements (i.e, preparation of an EA or EIS). As a result, NEPA does not require a certain alternative to meet a particular standard.

Western Watersheds Projects and Wilderness Watch (collectively, “Western Watersheds”) argued in the United States District Court for the District of Arizona that the Service did not take a hard look at the effects of proposed livestock grazing on the Mexican gray wolf.

The 9th Circuit holds that the Service:

... considered these issues (as well as other factors relevant to the project's effect on the Mexican Gray Wolf) and reasonably concluded that the proposed grazing was not likely to adversely affect the subspecies.

Citing in support of this conclusion is what the 9th Circuit describes as undisputed:

1. The proposed grazing area did not have documented Mexican Gray Wolf packs, dens, rendezvous sites, or territories.

2. Twelve of the thirteen active allotments were outside the wolves' occupied range and had no reported wolf sightings or instances of wolf-livestock conflict.
3. The only documented instances of wolf-livestock conflict in the proposed area did not result in removals.
4. The Mexican Gray Wolf population within the Mexican Gray Wolf Experimental Population Area (MWEPA) nearly doubled between 2016 and 2020 despite higher levels of grazing than those authorized by the Stateline Project.
5. The allotments constitute only a small portion of MWEPA.

Therefore, Western Watersheds was deemed to have not shown that the Service's conclusions were unreasonable.

Western Watersheds also argued that the Service failed to take a hard look at the cumulative effects of past and future removals (both within and outside of the project area) on the genetic diversity of the Mexican Gray Wolf population.

The 9th Circuit concluded that there was no evidence that the Stateline Project would cause removals. As a result, Western Watersheds was deemed to have not shown that a loss of genetic diversity due to removals is a potential cumulative impact.

Finally, the Service was held to have not acted arbitrarily or capriciously when it determined that an EIS was not necessary. This conclusion was reached by the Service because it determined that the Project would not have a significant impact on the quality of the human environment.

The Service's EA and finding of no significant impact were stated to have considered both the context and intensity of the possible effects of the Project. Western Watersheds was held to have not identified any facts that raised substantial questions that would trigger the need for an EIS. Therefore, it concluded:

... Because Forest Service considered the relevant factors and "provided a convincing statement of reasons" explaining why the Stateline Project's effects were expected to be insignificant, it did not violate NEPA when it decided not to issue an EIS.

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