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# Ozark-St. Francis National Forest/Fayetteville Shale Play: Eighth Circuit Court of Appeals Addresses Challenge to Forest Service Management Plan

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The Eighth Circuit Court of Appeals addressed in a May 30th Opinion a challenge by The Ozark Society (“The Society”) to a management plan developed by the United States Forest Service (“Forest Service”) for the Ozark-St. Francis National Forest (“Forest”). See No. 16-1952.

A key aspect of the Forest Service’s management plan was the estimate of future natural gas development in Northeast Central Arkansas’s Fayetteville Shale Play.

The Forest Service has certain responsibilities in its management of the national forests that are derived from statutes such as the National Forest Management Act of 1976 and the National Environmental Policy Act, respectively (“NFMA” and “NEPA”).

The Forest Service’s management plan for the Ozark-St. Francis National Forest estimated in 2005 that there would be 10 to 20 new natural gas wells developed in the area within the following 10 years. However, the Forest Service subsequently determined in 2008 that the development of the Fayetteville Shale Play would result in this number increasing to 1,730.

The Opinion indicates that despite the 85-fold increase in natural gas wells the Forest Service did not undertake a “correction, supplement, or revision” to the required environmental analysis.

The Society argued that the Forest Service policy manual required that it explain why it had not undertaken a supplemental environmental impact statement. This statement is denominated a “Supplemental Information Report” (“SIR”). As a result, that organization sued the Forest Service and other federal agencies in the United States District Court challenging its decision not to require a “correction, supplement, or revision.”

The lower Court held that:

- The Society had standing to sue (but denied preliminary injunctive relief)
- Granted summary judgment to the federal agencies for four reasons
- The 2010 SIR was not a final agency action subject to judicial review
- The Forest Service was not obligated to supplement the 2005 environmental impact statement

- The federal agencies did not have to allow public participation when deciding whether to supplement the environmental impact statement
- The Society's challenge to one particular drilling permit was moot because the well had already been drilled

In addressing the appeal of the lower court's decision the Eighth Circuit Court of Appeals noted that it must initially:

. . . address whether the Society had standing to challenge the agency action at issue.

The appellate court noted that its constitutional responsibility is to "redress or prevent actual or imminently threatened injury," and that unless a party has suffered such an injury, we have "no charter to review and revise . . . executive action" . . . .

The lower court had concluded that the Society's "allegations and the affidavit of Robert Cross. . . adequately set forth alleged concrete and particularized harm which will result from the drilling activities."

The Eighth Circuit undertook review of certain portions of the Society's Complaint in the previously referenced Declaration and determined that standing was not established.

After undertaking an analysis of the relevant legal principles the Eighth Circuit states in part:

The Society on the other hand, has alleged only that as a group it regularly uses the Ozark National Forest and that one identified member has used it in the past. This is short of the mark. Because the Society challenges federal action affecting the Ozark National Forest without alleging that a particular member has a specific plan to use that forest, there is no case or controversy before us, and we lack the authority to adjudicate this dispute.

The appellate court therefore dismissed the appeal for lack of jurisdiction.

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