

USDA Forest Service Update

August 2011

Subject: Litigation Update on Meister v. USDA Forest Service



Issue: *Meister v. USDA Forest Service*, Case No 07-13008, E.D. Mich.

Key Points:

- On November 15, 2010, the Forest Service recommended to the Department of Justice to pursue a petition for rehearing on clarification of the 90-day timeline imposed by the Court. On November 17, 2010, the Circuit Court denied the petition and referred the case back to District Court.
- The Huron-Manistee National Forests (HMNF) will address the Court's concerns by preparing a Supplemental Environmental Impact Statement (SEIS) to the Forest Plan. The District Court has ordered the Draft SEIS to be completed by October 1, 2011.
- ***The Final SEIS will be completed by January 31, 2012.***
- The Circuit found violations of the National Forest Management Act (NFMA) and the (National Environmental Policy Act) NEPA, because the agency failed to adequately analyze and explain the basis for its decision. The Circuit **DID NOT** find the Forest Service violated law because the revised Plan allowed for snowmobile use and hunting.
- The Circuit did not invalidate the revised Plan for the HMNF, which remains in effect.
- Lands affected by this Circuit decision represent less than seven percent of the HMNF and are identified as providing a semi-primitive non-motorized recreation experience. Nordhouse Dunes Wilderness is also affected.
- The Circuit's decision only applies to the HMNF. No other national forest is affected.
- Although it is possible the Circuit's decision may encourage other litigation, the specific Record and Forest Plan on the Huron-Manistee was at issue in this court ruling. The Court's opinion was very "fact" based as it pertained to deficiencies in the documentation (i.e., inadequate analysis based on estimated visitor use data and inadequate rationale for the decision).
- Any further court proceedings will be handled by the Department of Justice.
- A formal public involvement process to gather additional information and conduct further analysis for the SEIS began on December 28, 2010 with issuance of "A Notice of Intent" (NOI) in the Federal Register.
- Public involvement is a critical part of the process to supplement the Forest Plan EIS. The public is encouraged to contact the HMNF (i.e., Ken Arbogast at 231-775-2421) for more information. Public meetings were scheduled in early February.

- Initial comments on the scope of analysis (range of actions, alternatives and potential effects to be considered) were requested by February 11, 2011.
- The Michigan Department of Natural Resources & Environment (DNRE) is a cooperating agency in this endeavor. Two (2) DNRE staff members (specializing in wildlife and forest planning) will serve as representatives on the Interdisciplinary Team.
- Fifteen (15) potentially affected Tribes; some of which have hunting, fishing, and gathering rights under treaty, were asked to participate as cooperating agencies. The Forest Service also began consulting with fifteen (15) potentially affected county governments.
- Various snowmobile, hunting, and wildlife concerned user groups have requested changes to the 2000 planning regulations the Circuit Court found deficient. The agency, as a result of other nonrelated court rulings, was already revising its planning regulations. These new NFMA regulations were released for public comment and the Agency received over 300,000 comments. The Forest Service is working now to review, analyze and respond to the comments it received. The content of the comments will help improve the proposed rule and develop a final rule that is stakeholder driven and science-based.
- *The final NFMA Planning Rule is expected to be published in late 2011.*

Background: On September 29, 2010, the United States Court of Appeals for the Sixth Circuit reversed the Eastern Michigan District Court and held the Forest Service's adoption of the revised Plan for the Huron-Manistee National Forests (HMNF) violated the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). Specifically, the Circuit held the Forest Service violated several provisions of the 2000 Planning Rule (NFMA) by:

1. Arbitrarily estimating snowmobile and cross-country ski use – No demand supply analysis (36 C.F.R. § 219.21(a)(2));
2. Failing to coordinate recreational planning with the State of Michigan to eliminate (to extent feasible) duplicate recreation opportunities on state and national forests (36 C.F.R. § 219.21(e));
3. Failing to minimize conflicts between snowmobile users and others by keeping certain snowmobile trails open without an adequate explanation (36 C.F.R § 219.21(g)).

Further, the Circuit held the Forest Service violated NEPA by rejecting without explanation an alternative proposed by Mr. Meister that would close lands classified as primitive and semi-primitive, non-motorized to gun hunting and snowmobile use.

The Court sent the case back to District Court asking the Forest Service act within “90 days to adopt a plan” that complies with the law.

Contact:

Joel Strong, National Litigation Coordinator 202-205-0939 or jstrong@fs.fed.us