

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

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Nos. 07-4030

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HEARTWOOD, et al.,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR THE
)	SOUTHERN DISTRICT OF OHIO
DIRK KEMPTHORNE, et al.,)	
)	
Defendants-Appellees.)	
)	
)	
)	
)	

BEFORE: COLE, CLAY, Circuit Judges; RUSSELL, District Judge.*

RUSSELL, District Judge. Heartwood and Kentucky Heartwood (“Heartwood”) appeal the district court’s order granting summary judgment in favor of the United States Fish and Wildlife Service (“FWS”) and the United States Forest Service (“Forest Service”). This case concerns three Biological Opinions issued by the FWS pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. § 1536. If a federal agency action “may affect” an endangered species, the agency is required to formally consult with the FWS. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). At the conclusion of the consultation process, the FWS issues a Biological Opinion assessing whether the proposed action is likely to jeopardize the continued existence of the endangered species. 16 U.S.C. §

*The Honorable Thomas B. Russell, United States District Judge for the Western District of Kentucky, sitting by designation.

1536(b)(3)(A); 50 C.F.R. § 402.14(g)(4). The Biological Opinions at issue analyzed the impact of the Forest Service's proposed land and resource management plans for the Jefferson, Pisgah, and Daniel Boone National Forests, and concluded that the plans were not likely to jeopardize the continued existence of the Indiana bat, an endangered species. Heartwood filed a complaint in federal district court, alleging that the Biological Opinions violated the Endangered Species Act, 16 U.S.C. § 1531, et seq., and the Administrative Procedures Act 5 U.S.C. § 701, et seq. The parties filed cross-motions for summary judgment, resulting in the denial of Heartwood's motion for summary judgment, and the granting of the FWS and Forest Service's motion.

We review the district court's decision granting summary judgment *de novo*, applying the appropriate standard of review to the agency action. *Steeltech, Ltd. v. EPA*, 273 F.3d 652, 655 (6th Cir. 2001). We will set aside an agency's decision only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A).

After carefully reviewing the record, the applicable law, the parties' briefs and counsels' arguments, we find that the district court did not err in granting summary judgment in favor of the FWS and the Forest Service. The district court carefully examined Heartwood's allegations, the FWS's obligations under the Endangered Species Act, and the administrative record. The district court then correctly found that there is no evidence in the record which would show that the FWS acted arbitrarily and capriciously or failed to act in accordance with the law in determining that Forest Service's proposed actions were not likely to jeopardize the continued existence of the Indiana bat. Given the district court's comprehensive analysis, the issuance of a detailed opinion is unnecessary. We therefore AFFIRM the district court's granting of summary judgment for the reasons stated in the district court's order.