

FILED
JUN 09 2010
PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD ROCKIES,)	CV 09-160-M-DWM
)	
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
PAUL BRADFORD, Supervisor of the)	
Kootenai National Forest, JANE)	
COTTRELL, Acting Regional Forester of)	
Region One of the U.S. Forest Service,)	
UNITED STATES FOREST SERVICE, an)	
agency of the U.S. Department of)	
Agriculture, and UNITED STATES FISH)	
& WILDLIFE SERVICE, an agency of the)	
U.S. Department of Interior,)	
)	
Defendants.)	
_____)	

On June 4, 2010, Plaintiff Alliance for the Wild Rockies moved for a temporary restraining order and preliminary injunction in this matter. Plaintiff

has submitted an affidavit asserting that ground-disturbing activities may commence as soon as June 15, 2010, and Plaintiff argues these activities present a threat of irreparable harm to Plaintiff's interests by harming the grizzly bear population in the Kootenai National Forest. Garrity Dec., ¶¶ 7-9. Plaintiff also included a recent study, referred to in the affidavit, that finds road density has an important impact on grizzly bear survival. *Id.* at ¶ 9. Plaintiff represents that Defendants oppose this motion, although Defendants have not yet filed a response.

Pursuant to Fed. R. Civ. P. 65(b)(1), the Court finds a temporary restraining order is appropriate here to maintain the status quo. The parties completed summary judgment briefing in this matter on May 31, 2010, and the Court has not yet had an opportunity to review the merits of Plaintiff's claims. However, the projects may commence as soon as June 15, 2010, before the Court can render a decision on the case. As Plaintiff notes in its motion, the estimated population size of Cabinet-Yaak grizzly bears is approximately 45. In 2001, the Wildlife Service estimated there was a 60% probability the population was declining. Rock Creek Alliance v. U.S. Fish & Wildlife Service, 390 F. Supp. 2d 993, 1007 (D. Mont. 2005). That probability subsequently rose to 75%. Cabinet Resource Group v. U.S. Fish & Wildlife Service, 465 F. Supp. 2d 1067, 1073 (D. Mont. 2006). The most recent population estimates conclude there is an 87.8% to 90.6%

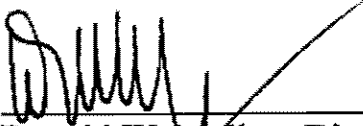
probability the Cabinet-Yaak grizzly bear population is declining. AR 1-31-034.2:66. The projects challenged by Plaintiff involve building several miles of new road, reconstruction of roads, and re-opening of currently closed roads. Because of the small population that is almost certainly decreasing and the potential threats to the grizzly bear population from road building and logging, the Court finds the Plaintiff has made an adequate showing of potential irreparable harm. Although Defendants have not been heard on this matter, given the short time until the projects may commence, the Court finds a temporary restraining order is appropriate to maintain the status quo until the Court can review the merits of the case.

A temporary restraining order “expires at the time after entry--not to exceed 14 days--that the court sets, unless before that time the court, for good cause, extends it for a like period.” Fed. R. Civ. P. 65(b)(2). The Court finds that the full time allowable under the rule, 28 days, is necessary to adequately review the merits of the case and will not have a significant impact on the implementation of the projects if they are eventually allowed to proceed.

IT IS HEREBY ORDERED that Plaintiff’s motion (dkt #28) is GRANTED IN PART and DENIED IN PART. It is GRANTED as to the request for a temporary restraining order and DENIED subject to renewal as to the request for a

preliminary injunction. Defendants are temporarily restrained and enjoined from implementing road-building, logging, or other activities associated with the Grizzly Vegetation and Transportation Management Project, the Miller West Fisher Project, and the Little Beaver Hazardous Fuels Reduction Project. This Order shall remain in effect for twenty-eight days from this date.

Dated this 9th day of June, 2010.


Donald W. Molloy, District Judge
United States District Court

15:04 p.m.

