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Russell County Sportsmen v. United States Forest Service

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***Russell Country Sportsmen v. United States Forest Service*, ___ F.3d __, 2011 WL 4820942 (9th Cir. 2011).**

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I. INTRODUCTION

Russell Country Sportsmen v. United States Forest Service[1] settled a dispute between a handful of motorized recreational groups and the United States Forest Service (Service).[2] The Montana Wilderness Study Act (Study Act) required the Service to "maintain" designated Wilderness Study areas for potential inclusion to the wilderness system of the United States.[3] The recreational groups alleged that the Service, through its Travel Management Plan (Plan), acted beyond the scope of the Study Act when the Service restricted motorized use in a portion of the Lewis and Clark National Forest.[4] Also, the recreational groups claimed the Service violated the National Environmental Policy Act (NEPA) by failing to prepare a supplemental draft environmental impact statement (SDEIS).[5] The Ninth Circuit determined that the Service's actions fell within the scope of the Study Act and did not require a SDEIS under NEPA.[6]

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2007, the Service issued a revised Travel Management Plan governing motorized and nonmotorized recreational use in a large portion of the Lewis and Clark National Forest including the Little Belt Mountains, the Castle Mountains, the north half of the Crazy Mountains, and the Middle Fork Judith Wilderness Study Area.[7] Generally, the Plan limited the amount of roads and trails that were open for motorized recreational use.[8] Originally, the Plan provided a

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[1] *Russell Country Sportsmen v. United States Forest Service*, ___F.3d ___, 2011 WL 4820942 (9th Cir. 2011).
[2] *Id*. at *1.
[3] *Id*.
[4] *Id*.
[5] *Id*. at *2.
[6] *Id*. at *1.
[7] *Russell Country*, 2011 WL 4820942 at *1.
[8] *Id*.

dispersed camping rule that would have allowed parking, passing, and camping anywhere within 300 feet of an open road; however, the revised Plan reduced the maximum distance allowed from the road to 70 feet.[9]

The recreation groups alleged that the Service exceeded the scope of the Study Act when it acted to "enhance" the wilderness character of the Middle Fork Judith Wilderness Study Area by limiting the acreage open to motorized recreation.[10] The Study Act required the Service to administer wilderness areas "to maintain their presently existing wilderness character."[11] On summary judgment, the district court ruled that the Study Act required the Service to preserve the wilderness character of the Middle Fork but prohibited the Service from "enhancing" the wilderness character.[12]

The recreational groups also accused the Service of violating NEPA when they chose a plan that was not in the range of alternatives considered in the Draft Environmental Impact Statement (DEIS).[13] The groups argued that the Service was required to prepare a SDEIS.[14] Again, on summary judgment, the district court determined that the Service did not comply with NEPA when it adopted a plan that "fell outside the range of alternatives" considered in the DEIS without a supplemental report.[15]

III. ANALYSIS

The Ninth Circuit reversed the district court's decision on both of the recreation groups' allegations.[16] On the NEPA issue, the Ninth Circuit addressed, and reversed, each of the district court's conclusions regarding the Service's Plan and departure from the range of alternatives in

[9] *Id*.
[10] *Id*. at *2.
[11] *Id*. (citing Pub.L. No. 95-150, § 3(a), 91 Stat.1234 (1977)).
[12] *Id*.
[13] *Russell Country*, 2011 WL 4820942 at *2.
[14] *Id*.
[15] *Id*.
[16] *Id*. at *9.

the DEIS. The Ninth Circuit also addressed the Study Act claim, not needing much more than the Study Act's own words and a dictionary to reverse the decision of the district court.

A. Study Act

Under the Study Act, the Service must administer wilderness study areas to maintain their wilderness character as it existed in 1977.[17] The Service must also maintain the wilderness study area's potential for federal wilderness designation.[18] The recreation groups alleged that the first obligation prohibits the Service from not only degrading the wilderness character but also *enhancing* it.[19] In response, the Service argued that the Study act created an environmental protection "floor," rather than a "ceiling." The Ninth Circuit agreed believing that "enhancement of wilderness character is fully consistent with the Study Act's mandate."[20] The Ninth Circuit justified this opinion using the Act's own words, legislative history, and the Webster's Dictionary.[21]

B. NEPA

Under NEPA, the government must prepare an DEIS for any potential action "significantly affecting the quality of the human environment."[22] After an agency prepares a DEIS, the report is available for public comment.[23] The agency may choose to modify or change the DEIS based on public comments received.[24] If the final proposed action substantially deviates from the plan in the DEIS, a SDEIS is required.[25]

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[17] *Id*. at *1.
[18] *Id*. at *3.
[19] *Russell Country*, 2011 WL 4820942 at *3.
[20] *Id*.
[21] *Id*. at **3–4.
[22] *Id*. at *5 (citing 42 U.S.C. § 4332(2)(C) (2006)).
[23] *Id*.
[24] *Id*.
[25] *Russell Country*, 2011 WL 4820942 at *5 (citing 40 C.F.R. § 1502.9(c) (2011)).

The Ninth Circuit employed guidance provided by the Council for Environmental Quality (CEQ), which directly addressed when a SDEIS is necessary.[26] The CEQ stipulated that supplementation is not required if the new alternative is both a "minor variation of one of the alternatives discussed in the draft" and is "qualitatively within the spectrum of alternatives" proposed in the DEIS.[27]

The district court listed four changes in the Plan that required an SDEIS: the overall motorized use mileage, trail closures not specified in the DEIS, modification of the end date of the snowmobile season, and modification of the dispersed camping rule.[28] On the mileage issue, the Service proved that the number in the Plan was indeed within the range of alternatives in the DEIS by offering numbers that avoided the double counting of mileage.[29] The issue regarding the end date of the snowmobile season was also easily addressed. During the appeals phase of this case, the Service changed to reflect the date proposed in the DEIS, thus, alleviating the recreational groups claim of a change in the date.[30]

Regarding trail closures, the court determined that even though the Service's Plan closed more trails than were acknowledged in the DEIS, the closures were "minor variations" and were "qualitatively within the spectrum of alternatives."[31] The Ninth Circuit also found modification of the dispersed camping rule satisfied these elements as well.[32] The court reasoned that the dispersed camping rule was secondary to the intent of the plan, the modifications were minor, and the travel plan, as modified, would not create impacts that the Service had not already considered.

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[26] *Id*. at *5.
[27] *Id*.
[28] *Id*. at **6–7.
[29] *Id*. at *6.
[30] *Id*. at *7.
[31] *Russell Country*, 2011 WL 4820942 at *7.
[32] *Id*.

IV. CONCLUSION

The Ninth Circuit disregarded the decision rendered by the district court with forthright and lucid analysis. Unlike reading some of the more baffling decisions from courts ruling on environmental government statutes and regulations, this decision enhances the Service's ability to make forest management decisions and warms you to the notion that our forests are in good hands. In light of this opinion, "minor variations" of a DEIS will not require a SDEIS, if those variations are within the range of alternatives. The Service's final determination will have a certain degree of elasticity, much to the chagrin of motorized recreational groups.