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## **5. FORESTS: 9th Circuit halts Idaho Panhandle timber sales** (07/05/2007)

**Arthur O'Donnell, *Land Letter* editor**

The 9th U.S. Circuit Court of Appeals on Monday overturned a lower court's approval of a Forest Service plan for selective logging in the Idaho Panhandle National Forest, remanding the case for issuance of an injunction against the proposed timber harvest.

The Mission Brush Project, approved by an April 2006 record of decision by Supervisor Ranotta McNair, would have allowed logging of 3,829 acres of Forest Service lands about 16 miles north of Bonner's Ferry, plus construction or upgrading of associated roads and improvements to recreational facilities in the area. The project also targets about 277 acres of old-growth forest for logging.

The project was divided into three phases totaling an expected 23 million board feet of lumber, with bids accepted for two of the three and no bids made on the third parcel. Logging has already begun on the first two parcels, but Forest Service officials said they would not award any new contract on the last parcel at Mission Fly By until the litigation is resolved. The issue now returns to district court for an injunction and possible settlement over a revised plan.

The reason for the project, according to the Forest Service, is to thin and bring more tree diversity to a forest that had become too dense and populated mainly by Douglas fir and Ponderosa pine because of decades of logging and fire suppression. According to the 2006 record of decision, the project would trend "toward desired future conditions" by adding more tree species and stocking levels that resist insects, diseases and stand-replacing wildfires.

However, the Lands Council and Wild West Institute challenged the timber plan, saying that it will do more harm than good for wildlife, including several sensitive species. Although the complaint was dismissed by a district court, the appeals panel criticized the Forest Service's reliance on what it called an "unverifiable hypothesis" that "treating old-growth forest is beneficial to dependent species."

The Forest Service failed to demonstrate that the project will not harm flammulated owls, northern goshawks, fishers or Western toads, "all of which have been designated as sensitive whose viability is of special concern," wrote the court. For example, the plan would result in cutting more than half of the suitable habitat for the flammulated owls, while disturbing 2,500 acres of habitat for the northern goshawk.

While the lower court found that the plaintiffs were unlikely to prevail on claims that the plan violates the National Forest Management Act and the applicable forest plan, the 9th Circuit determined that the groups were likely to prove that the Forest Service's plan was not supported by science.

Mike Hamilton, executive director of the Spokane-based Lands Council, indicated that the group would try to reach a compromise with the agency that could allow some of the logging to go forward. "We were O.K. with some of the Mission Brush Project," he said. However, in several areas, trees were being cut back to as few as 10 per acre. "It looked like a clear cut and that's completely inappropriate and bad for habitat," he added.

"The fire experts tell us that what really works for fire prevention is all about creating a more complex stand," Hamilton said.