

JUDGE BANS LATE-SEASON SNOWMOBILING ON FLATHEAD NATIONAL FOREST

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MISSOULA – U.S. District Judge Donald Molloy yesterday ruled that snowmobiling on the Flathead National Forest cannot continue after grizzly bears have emerged from their winter dens. This will provide better protection for the bears on 52,000 acres of habitat the Forest had opened to snowmobiling as late as the end of May in its 2006 Amendment 24 to the Flathead Forest Plan. Judge Molloy ruled that the 1995 Amendment 19 to the Forest Plan clearly prohibited snowmobiling after mid-March and that the Forest's failure to enforce the spring closure to snowmobiling was no excuse to authorize the harm it causes bears under Amendment 24.

Judge Molloy also tossed out Fish and Wildlife Service's biological opinion authorizing the late-season snowmobiling. "By relying upon the degraded conditions resulting from the Forest Service's refusal to enforce its own ban on spring snowmobiling, the Fish and Wildlife Service was able to bolster the alleged benefits to grizzly bear resulting from Amendment 24, when in fact the Forest Plan was changed to allow *more* spring snowmobiling than was permitted before. This manipulation of the [Endangered Species Act] process renders the Fish & Wildlife Service's analysis and 'no jeopardy' conclusion unreliable."

Conservation groups Swan View Coalition and Friends of the Wild Swan brought the suit against Amendment 24 and its biological opinion, in conjunction with a legal challenge to a 2005 biological opinion allowing the Flathead more time to implement the motorized access management required under its 1995 Forest Plan Amendment 19.

"The government admitted springtime snowmobiling can harm, if not kill, female grizzly bears with young emerging from their dens," Swan View Coalition Chair Keith Hammer said. "We're glad the judge saw through the twisted logic claiming this was a benefit to bears. We hope the Forest Service will now do away with this unprecedented spring snowmobiling permanently so we don't end up right back in court again."

Judge Molloy also dismissed two claims in the lawsuit after the government agreed to reexamine the effects that delaying Amendment 19's road closure and reclamation program would have on threatened bull trout. "We essentially won these claims," said Arlene Montgomery, Program Director for Friends of the Wild Swan. "Delaying road reclamation has a detrimental impact on bull trout because when there are too many roads the culverts can clog and blow out, which damages crucial spawning habitat."

Judge Molly ruled in favor of the government, however, on the remaining claims involving the relaxed time frame by which Amendment 19 can be implemented. This is consistent with his rulings on two earlier cases brought by the same conservation groups on the motorized access management aspects of the Moose, Robert-Wedge, and

Westside Reservoir Post-Fire Projects. He nonetheless repeated several of his earlier admonishments from the Moose case:

“It is clear from the record in this case that, from a travel management standpoint, the Forest Service’s top priority in approving the Moose Project was to find a way around the requirement that it give top priority to the needs of the grizzly bear. This comes precariously close to political management of land use.”

The groups have appealed Judge Molloy’s ruling in the Moose Post-Fire case to the Ninth Circuit Court of Appeals and will present oral argument there on June 2. Yesterday they also filed an appeal of Judge Molloy’s ruling in the Robert-Wedge and Westside Reservoir Post-Fire Projects with the Ninth Circuit.

“We feel Judge Molloy is mistaken in letting the government claim it is benefiting bears by renegeing on the protections promised in Amendment 19,” Hammer concluded. “We will continue to argue for the bears.”

“We appreciate Judge Molloy’s ruling in favor of the bear over late season snowmobiling,” Montgomery concluded. “But we are still concerned about weakening protection for bears, bull trout and other fish and wildlife because the agencies continue to backslide on the provisions of Amendment 19.”

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