

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

FRIENDS OF THE BITTERROOT, et
al.,

Plaintiffs,

vs.

DOUG BURGUM, Secretary of the
Interior, et al.,

Defendants.

CV 24-169-M-DLC

ORDER

In December 2024, Plaintiffs filed suit challenging the 2023 Programmatic Amendment 40 to the 1987 Forest Plan for the Bitterroot National Forest (“Amendment 40” or the “Amendment”). (Docs. 1, 16.) More specifically, Plaintiffs alleged that Amendment 40 eliminated prior restrictions on road densities and motorized access without adequately considering the resulting impacts on grizzly bears and bull trout in violation of the Endangered Species Act (“ESA”), the National Environmental Policy Act (“NEPA”), and the National Forest Management Act (“NFMA”). (*See id.*) On June 9, 2026, summary judgment was granted in favor of Plaintiffs as to all their ESA claims and two of their NEPA claims. (Doc. 48.) The question now is one of remedy. Plaintiffs argue that “[g]iven the fundamental nature of Defendants’ errors and the potential resulting

harm to these species, [the] Court should vacate Defendants’ ESA and NEPA analyses and Amendment 40.” (Doc. 50 at 2.) On the other hand, Defendants argue that vacatur is “unnecessarily disruptive,” (Doc. 49 at 2), and alternatively, if vacatur is ordered, it should only address a discrete portion of Amendment 40, (*id.* at 11–12). Ultimately, consistent with Defendants’ alternative remedy argument, partial vacatur is appropriate.

The APA directs that “[t]he reviewing court shall . . . set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A). Vacatur is the usual remedy where an agency has acted unlawfully, *All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1121 (9th Cir. 2018), but the district court “is not required to set aside every unlawful agency action,” *Nat’l Wildlife Fed’n v. Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995); *see Cal. Cmty. Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 992 (9th Cir. 2012) (per curiam) (“A flawed rule need not be vacated.”). “Whether agency action should be vacated depends on how serious the agency’s errors are and the disruptive consequences of an interim change that may itself be changed.” *Cal. Cmty.*, 688 F.3d at 992 (internal quotation marks omitted). In assessing the seriousness of the error, courts “consider whether vacating a faulty [decision] could result in possible environmental harm.” *Pollinator Stewardship Council v. Env’t Prot. Agency*, 806

F.3d 520, 532 (9th Cir. 2015). Another consideration is “whether the agency would likely be able to offer better reasoning or whether by complying with procedural rules, it could adopt the same [decision] on remand, or whether such fundamental flaws in the agency’s decision make it unlikely that the same [decision] would be adopted on remand.” *Id.* Additionally, courts consider whether the errors are “limited in scope.” *All. for the Wild Rockies v. Savage*, 375 F. Supp. 3d 1152, 1156 (D. Mont. 2019); *see Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Col.*, 605 U.S. 168, 185 (2025) (“Even if an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency’s ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS.”).

As discussed in this Court’s prior order, Plaintiffs challenge a single component of Amendment 40, the amendment of the elk habitat effectiveness standard to eliminate limitations on open-road densities in third-order drainages. FS010377. This Court found that the agencies failed to adequately consider, or consider at all, the Amendment’s impacts on grizzly bear and bull trout, which are both directly adversely affected by open roads. (*See* Doc. 48.) The errors are therefore significant. And Defendants do little to assuage these concerns. Indeed, Defendants simply argue that the agencies are likely to follow the same course of action on remand because the decision was based on valid elk considerations. But

the fact that an action is intended to benefit one species does not offset that action's adverse effects on other species, especially if those other species are protected under the ESA. Just because the reason for the Amendment has not changed does not mean the calculus behind adopting it will remain the same once all the impacts are properly assessed. The fact the agencies did not consider those impacts is particularly concerning given the Forest-wide application of Amendment 40. The seriousness of the agencies' errors therefore weighs in favor of vacatur. However, those errors relate to a single component of Amendment 40, the elk habitat effectiveness standard. The remaining components of Amendment 40 were neither challenged nor addressed. Accordingly, the record neither compels nor supports vacating Amendment 40 in its entirety.

The next consideration is the disruptive effect of vacatur, specifically vacatur of the amendment to the elk habitat effectiveness standard. On the present record, this consideration is neutral. Defendants argue that they will be forced to pursue project-specific amendments for those projects that would alter open road density without bringing the affected drainages into compliance with the 1987 standard. However, the agencies have successfully done so in more than 10 instances over the last few decades, and Defendants indicate that there are no current or prospective projects that rely on the amended elk habitat effectiveness standard. (*See* Doc. 49-1 at ¶¶ 13–15.) The disruptive consequences of maintaining

the pre-Amendment status quo are therefore minimal. Because this consideration is neutral, vacatur turns on the seriousness assessment, which supports partial vacatur.

Based on the foregoing, IT IS ORDERED that the agencies' approval of Amendment 40 is VACATED to the extent it removed the road density requirement from the elk habitat effectiveness standard. The approval of Amendment 40 otherwise remains in place. This matter is REMANDED to the agency for further proceedings consistent with the ESA and NEPA as identified in the Court's June 9, 2026 Order, (Doc. 48).

IT IS FURTHER ORDERED that Clerk is directed to enter Judgment consistent with both this Order and the Court's June 9, 2026 Order, (Doc. 48), and close the case file.

DATED this 10th day of July, 2026.



Dana L. Christensen, District Judge
United States District Court