

9th Circuit hears Tongass timber case

Environmental groups and the U.S. Forest Service debated timber demand estimates and Tongass National Forest management at a 9th Circuit Court of Appeals hearing Tuesday in Seattle.

The court is considering a case filed by six environmental groups challenging several timber sales in roadless areas of the Tongass. The groups have said the Forest Service misinterpreted Tongass timber demand projections to the detriment of wildlife and old-growth forests. The Forest Service has said the timber forecast did not play a significant role in the forest planning process.

Arguing for the environmental groups, Earthjustice attorney Tom Waldo said the regional forester weighed timber demand against wildlife protection in the Tongass Land Management Plan decision.

"It was impossible to provide the volume of timber he thought was needed to meet market demand while also avoiding risks to wildlife," Waldo told the court. "He had to make trade-offs, he had to make choices about relative risks. And the problem is he fundamentally misunderstood the timber side of the equation and that affected the result."

The Forest Service has admitted it made a mistake with the timber estimates. But U.S. Justice Department Attorney Elizabeth Ann Peterson, representing the Forest Service, said the market demand projections did not play a significant part in evaluating plan alternatives.

"The Forest Service did not expose wildlife to risk in order to assure market demand could be met," she said. "That was simply not the way the plan was designed and it was not the way the plan was adopted. The plan revision did not mislead the public or the decision maker with respect to economic impacts and it did consider a full range of reasonable alternatives."

The agency determines what land needs to be protected before asking decisions about where development and logging is allowed, Peterson said.

"What the Forest Service did ... was to go over and over the forest to determine what lands needed to be excluded from any consideration of any logging in order to ensure that over the next 100 years, at the maximum level of production, that the species on the forest would remain viable," she said.

The case involves seven timber sale projects in roadless areas of the Tongass, including Finger Mountain in Tenakee Inlet, the Cholmondeley sale on the east side of Prince of Wales Island, the Sea Level sale on Revillagigedo Island, the Canal Hoya sale on the north side of the Cleveland Peninsula, the Crane and Rowan Mountain sale on Kuiu Island, the Chasina sale on east Prince of Wales and the Madan sale near Wrangell. The Sea Level project includes the Orion North timber sale near Ketchikan, where the court issued an injunction last fall to halt logging and road building.

Attorney Steve Silver, representing the Alaska Forest Association and the State of Alaska, suggested the circuit court send the case back to the district court if it doesn't rule in favor of the Forest Service. The AFA and the state asked to intervene in the case.

"This case for us is about survival. Survival of our small industry, survival of the small remaining timber mills. There are only three, all privately owned, all owned by local

people," Silver said. "We urge this court to remand the case back to the trial court with full flexibility for the trial court to fashion a remedy that will permit full survival of our industry consistent with the findings of the court."

Waldo, representing the environmental groups, said there is plenty of timber land available outside of roadless areas.

"I don't want to walk away from here conveying the impression that we are attacking the survival of the industry in the way Mr. Silver put it," he said. "There's adequate, abundant opportunity for this industry to survive, and indeed to thrive, without threatening all these roadless areas. There's way more land open for logging than there needs to be. "

The case was heard by presiding Circuit Judge M. Margaret McKeown, Circuit Judge Ronald M. Gould and Senior Circuit Judge Betty Binns Fletcher. An audio file of the hearing is available on the 9th Circuit Court's Web site.

The environmental groups that filed the lawsuit are the Natural Resources Defense Council, the Southeast Alaska Conservation Council, the Sierra Club, the National Audubon Society, the Wilderness Society and the Center for Biological Divers.