

Before the Court is Plaintiff's motion for a compliance schedule that will direct Defendant as it abides by this Court's September order, which mandates compliance with the National Environmental Policy Act and the Endangered Species Act. The motion has merit. Two cases provide guidance and highlight the discretion

FOREST SERVICE EMPLOYEES FOR ENVIRONMENTAL ETHICS, Plaintiff, vs. UNITED STATES FOREST SERVICE, an agency of the United States Department of Agriculture, Defendant.

CV 03-165-M-DWM ORDER

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

FILED  
 MISSOULA, MT  
 2005 DEC 28 PM 4 25  
 PATRICK E. DUFFY  
 BY \_\_\_\_\_  
 DEPUTY CLERK

this Court has to impose such a schedule. In *Alaska Center for the Environment*, the Court intervened to mandate Environmental Protection Agency (EPA) compliance with the Clean Water Act (CWA). 796 F.Supp. 1374, 1375 (D. Alaska 1992). Although the Court let the EPA and the State of Alaska formulate a reasonable schedule, it noted its authority to mandate compliance with congressional intent. *Id.* at 1379-80. The Court expressed frustration over a thirteen-year delay on the part of the EPA and concluded the EPA may request a deviation from an imposed schedule with a showing of good cause. *Id.*

Likewise, while imposing a thirteen-month deadline on the USFS, a federal court addressing the spotted owl issue noted the power it had to "secure prompt compliance with the law." *Seattle Audubon Society v. Moseley*, 798 F.Supp. 1494, 1497 (W.D. Wash. 1992) (citing *Weinburger v. Romero-Barcelo*, 456 U.S. 305, 320 (1982)). The Court elaborated, "[t]o hold that courts cannot do this would invite lawlessness; an agency could escape its statutory duties simply by procrastinating." *Id.* These cases highlight this Court's power to make parties comply with the law. However, it would be premature to impose Plaintiff's proposed thirteen-month schedule without considering all of the appropriate facts and circumstances.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion

for a compliance schedule is GRANTED;

IT IS FURTHER ORDERED that Defendant has until January 31,

2006 to propose a compliance schedule; and

IT IS FURTHER ORDERED that a hearing is set for February 8,

2006 at 1:30 p.m. at the Russell E. Smith Federal Courthouse in

Missoula, MT where the parties may present the merits of their

proposed schedules to the court.

DATED this 15 day of December, 2006.

Donald W. Molloy, Chief Judge  
United States District Court

