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MISSOULA, MT
2007 OCT 12 PM 2 10
PATRICK E. DUFFY
BY _____
DEPUTY CLERK

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

FOREST SERVICE EMPLOYEES FOR)	CV-03-165-M-DWM
ENVIRONMENTAL ETHICS,)	
)	ORDER
Plaintiff,)	
)	
vs.)	
)	
UNITED STATES FOREST SERVICE, an)	
agency of the U.S. Dept. of)	
Agriculture,)	
)	
Defendant.)	

At the last minute in this case, there has been a flurry of filings, voluminous to say the least. Because the Forest Service, and Secretary Rey, have approached this case in an apparent effort to circumvent the law as opposed to complying with the law, it is most difficult to consume all the information filed so that I can meaningfully decide the issues before me. As

an example, on October 10, 2007, in an obvious attempt to avoid a contempt hearing, the Forest Service filed a document saying basically that defendants intended to take steps to show they were going to try to comply with my orders of February 9, 2006 and August 17, 2007. When Plaintiff reviewed what had been filed, it immediately sought an order requiring the Secretary to appear on October 15, 2007, and to have the Court hold him in contempt because there was no compliance with either the law or the Court's orders. Then, in this game of litigation chess, the Forest Service filed more pleadings as well as a DN/FONSI. The DN/FONSI was prepared in response to the contempt motion because it is dated October 11, 2007, one day after compliance was required, and the day after Plaintiff moved to go forward with the contempt hearing. Additionally, an EA was filed and I don't know how this document differs from the one that Secretary Rey suppressed nearly six years ago on the matter that is the focus of this litigation.

Due to the course the government has chosen to follow in this case, I am forced into a position of having to read and consume nearly 200 pages of information while at the same time holding hearings and taking evidence in other cases. Consequently, I am vacating the hearing scheduled for Monday, October 15, 2007, but do so only to have time to consider whether the information filed complies with the Court's earlier orders. I

have not determined that Defendants have complied with my earlier orders. I have not determined that Defendants have complied with the law. If on review I find there is noncompliance, I will reschedule the contempt hearing and Secretary Rey will be required to appear and show cause why he should not be held in contempt—and jailed—until the law and the Court's Orders have been complied with. I need the EA from six years ago that was suppressed to assist me in evaluating the legitimacy of the documents filed in this case including the current EA and the DN/FONSI.

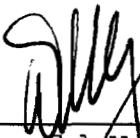
THEREFORE, IT IS ORDERED that the contempt hearing now scheduled for October 15, 2007, is vacated.

IT IS FURTHER ORDERED that the Forest Service shall, within 10 days of the date of this Order, produce the EA from six years ago that addressed the subject matter of this litigation, the use of aerial retardant. The Forest Service shall file the EA electronically and provide the Court with a hard copy.

IT IS FURTHER ORDERED that Secretary Rey, on further notice, shall be prepared to appear and show cause why he should not be held in contempt, and jailed until the contempt has been purged by compliance with the laws enacted by the Congress of the United States, including NEPA and ESA.

The clerk is directed to notify the parties of the entry of this order.

Dated this 12th day of October, 2007.


19:11 p

Donald W. Molloy, Chief Judge
United States District Court
