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Lawsuit filed against Willow Creek Vegetation Project

By [Roger Dey](#)
BVD



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A ridge north of Dalton Mountain shows a mix of extensive beetle killed trees and more resilient forest. The area in the photo is part of the project area and is slated for low severity prescribed fire and some regeneration harvest.

The Alliance for Wild Rockies and the Native Ecosystems Council filed suit last week in federal district court to halt implementation of the Willow Creek Vegetation Project southwest of [Lincoln](#).

The environmental groups claim the Forest Service designated the area as a "threatened landscape" without conducting the proper environmental analysis under the National Environmental Policy Act. Without that analysis, they claim the public has been denied the opportunity to review or comment on projects in those areas.

In 2014, at the request of Gov. Steve Bullock, the Forest Service designated nearly five million acres in Montana, including the Willow Creek Project area, as "threatened Landscapes" under the Farm Bill's amendments to the 2003 Healthy Forest Restoration Act.

"The Farm Bill does not obviate the Forest Service's obligation to conduct a NEPA analysis before taking such a discretionary action to designate landscape-scale areas to address insect or disease threats," the lawsuit says.

The groups go on to claim the Forest Service again violated NEPA by approving the project without completing an "extraordinary circumstance" analysis that would have determined whether the project's impacts on the environment are minimal enough to qualify for the Farm Bill's categorical exclusion. They contend the cumulative impact the project would have on the project area and on the Nevada Mountain and Ogden Mountain Inventoried Roadless Areas that bracket it to the east and west should have been considered.

According to the lawsuit, "the agency must document that the action to be undertaken is insignificant, because the threshold question in a NEPA case is whether the proposed project will significantly affect the environment, thereby triggering the requirement for an environmental impact statement" before implementing a categorical exclusion.

AWR and NEC further argue that the Forest Service failed to consider the 'unroaded' portions of the project area and how the project may impact possible future wilderness designations of the Nevada Mountain and Ogden Mountain IRAs.

The groups are requesting that the court vacate the project decision, halt the project's implementation and remand it back to the Forest Service for additional analysis. They are also requesting an award of expenses and witness and attorney fees under the Equal Access to Justice Act.

The [Lincoln](#) Ranger District developed the 2,140-acre Willow Creek project in 2017 under a categorical exclusion authorized by the 2014 Farm Bill, with the goals of addressing insect and disease killed trees in the Dalton Mountain area, improving the resilience of forest stands and mitigating fires risks within the Wildland Urban Interface.

The District hosted an overview of the project and treatment options to the public at an open house at the [Lincoln](#) Ranger District office May 9, 2017, followed by a field trip May 12. The district held a second open house in December 2017 and scoping began in February 2018, In the lawsuit both groups note that they submitted comments during the administrative review process.

Helena-Lewis and Clark Forest Supervisor Bill Avey signed the project Decision Memo May 29.

"We worked with the [Lincoln](#) Restoration committee and a number of other publics to build a collaborative process with the Willow Creek Project, he told the BVD. "We feel very confident in our decision in moving ahead with the project."

The project is the second vegetation management project in the [Lincoln](#) area that has been litigated by AWR and NEC. In 2017, a lawsuit by the two organizations brought a halt to the Stonewall Vegetation Management Project, a collaborative effort developed over nearly a decade to address the impact of Mountain Pine Beetle, improve wildlife habitat and reduce fire hazards. Much of the project area burned in the Arrastra Creek and Park Creek Fires of 2017.

Unlike the Stonewall Project, the AWR and NEC have yet to invoke the Endangered Species act, but instead focused on alleged violations of the National Environmental Policy Act.

The three primary allegations in the lawsuit – violations of NEPA due to the "threatened area' designation, failure to analyze cumulative effects and failure to analyze wilderness potential of adjacent IRAs - are identical to those found in a lawsuit filed by AWR and NEC June 3 against the North Bridger Forest Health Project. That project, developed by the Custer National Forest near Bozeman, has several aspects in common with Willow Creek and, side from information specific to the individual projects, the language in both law suits is essentially identical.

The Willow Creek Project is in an area the Upper Blackfoot Working Group hopes to see designated as a Forest Restoration Area. The Working Group has spent more than four years developing the [Lincoln](#) Valley Public Lands Proposal, a legislative proposal designed to address forest management hurdles.

"Our group would like to see that become a forest restoration area, and actually do more logging and more forest management in that particular area," said Bill Cyr, a member of the group. "We're not recommending any wilderness in that area. We don't feel it meets the criteria for quality wilderness."

He doesn't buy arguments the public was excluded from reviewing or taking part in the Willow Creek project's development.

"The public was heavily involved," Cyr said. "Because it was (a) Farm Bill (project), were there different laws and processes? Yes. But I believe the agency followed the law of the land. That's all you can ask of your land managers. And they did it. They just happen to have a law that allowed them to do it in a little bit different process.

Cyr sees the Willow Creek litigation as an example of groups using lawsuits to hold National Forest land hostage, while creating catastrophic damage.

"It's important for the forest health that it happens," said Cyr, who works as a forester for the state of Montana. "It's important for the ecosystem that it gets back into some balance."

However, in a June 18 story on the lawsuit in the Missoula Current, AWR Executive Director Michael Garrity called the restoration and fire prevention aspects of the project "B.S." and claimed, "They just want to get the logs out."

He went on to dispute the wildfire threat and whether the project area is in the wildland Urban interface. "Like every forest, you can see some beetle-killed trees. But it's not predominant, and that's why they want to go in there. They prefer to cut live trees," Garrity is quoted as saying.

Zach Muse, [Lincoln](#)'s Fire Chief, disagrees and believes management of the forest conditions and beetle-killed trees in the Dalton area is vital to the safety of Willow Creek- area residents and [Lincoln](#) itself.

"That whole area is full of dead timber, it's too thick in places, and (it's) too dangerous to put crews on the ground if a fire does start," he said. "If a fire began over there, it would have [Lincoln](#) in the crosshairs due to prevailing winds and topography."

Muse, who managed [Lincoln](#) Volunteer Fire Department resources during the hectic 2017 fire season, is blunt in his appraisal of the motivation of the two groups. "Once again, these extremist conservation groups who don't live here, (and) don't have a clue what's going on here, sue just to sue."

Cyr said he's extremely disappointed by the lawsuit and has concerns that such litigation may take a toll on collaborative efforts by causing people to re-evaluate how much effort they want to put into developing projects that are repeatedly blocked by litigation.

"I feel like we've worked really hard with the conservation community on this project we're proposing," he said. "To me, it hurts our efforts and it hurts the process of future collaboratives."

