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MISSOULA, MT
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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.)	
)	

Defendant filed a motion requesting relief pursuant to Rule 60(b), Federal Rules of Civil Procedure. For the reasons enumerated below the Court grants a limited extension.

On February 9, 2006, this Court ordered Defendant to comply with the National Environmental Policy Act ("NEPA") by August 8, 2007. That date has passed and the Defendant has failed to

comply with the Court's Order. At the February hearing I specifically warned the Forest Service that it should not wait to the last minute before seeking more time if there was a problem with compliance. What I said was:

Well, I don't think three years is a reasonable time or 30 months is a reasonable time. In my sense of it -- I understand what Mr. Bechtold 's arguing, it has some appeal to me in light of all the record I've been looking at, but I accept Ms. Huber's point and I'm going to require that there be NEPA compliance within 18 months of today 's date. Now, I'll do that with the caveat that so long as there is some warning ahead of time, if, at a year or whatever is the appropriate time, you don't think you're going to be able to hit the target, you give notice to the plaintiffs. My suggestion would be that before you ask for more time, you discuss it with the plaintiffs and the interveners. And if there's a way that can be resolved without the Court involving itself, then I am happy to accept whatever you agree on. But I think you can get it done in 18 months. And if you are going to come in with a controversy, I hope it's not at 17 months and 29 days.

Despite this Court's admonition at the February 8, 2006 hearing, the Defendant has waited until precisely the 17th month and 29th day to ask for additional time. I do not think the timing of the motion is fortuitous. Rather, it seems as if the government is playing a not too funny game, betting that the Court will be forced to grant the additional time and hoping the irony of the timing will be overlooked. It isn't, and it won't be. As the Plaintiff suggests, the Defendant has created its own compliance problem. The Defendant must comply with NEPA. The Forest Service can not disregard the orders regarding the

Endangered Species Act, and it must meet its legal obligations under NEPA and as ordered by this Court. I am extending the deadline to October 15, 2007. If there has been no compliance by that date, I will hold a contempt hearing at which Undersecretary Rey will be required to personally attend and show cause why he should not be held in contempt for failure to comply with the orders of the Court. Pursuant to Rule 60(b)(6), the deadline for NEPA compliance is extended until October 15, 2007.

It has been six years since Forest Service staff completed a "retardant EA" - only to have higher-up officials embargo it. *Forest Serv. Employees for Env'tl. Ethics v. United States Forest Service*, 397 F. Supp. 2d 1241, 1246 (D. Mont. 2005). The time I am giving is likely to prove insufficient if: 1) the agency is simply unwilling to follow the law; or, 2) it is prevented from following the law by its political masters, as was the case when Under Secretary of Agriculture Mark Rey ordered that formal ESA consultation regarding fire retardant not occur.

To ensure this new schedule is met, the Court is ordering Under Secretary of Agriculture Mark Rey's personal attendance in this Court on October 15, 2007, to hand-deliver to the Court the NEPA document, or be prepared to explain why he should not be held in contempt. In the event NEPA compliance is not achieved by October 15, 2007, Mr. Rey's personal appearance in Missoula will make more efficient an appropriate coercive remedy. If the

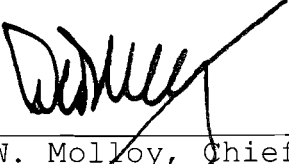
Court's earlier order is complied with on or before October 10, 2007 then Undersecretary Rey is relieved of any obligation to appear and show cause why he should not be held in contempt for failing to abide by the orders of this court.

Accordingly, IT IS HEREBY ORDERED that Defendant's motion for relief (dkt #127) is GRANTED IN PART and DENIED IN PART;

IT IS FURTHER ORDERED that a hearing on the matter is set for 8:30 a.m. on October 15, 2007 at the Russell Smith Courthouse in Missoula, MT; and

IT IS FURTHER ORDERED that Under Secretary Mark Rey shall be present at the October 15, 2007 hearing unless the order is complied with by October 10, 2007 and if it is not, he must be prepared to show cause why he and/or the United States Forest Service should not be held in contempt and subject to coercive sanction.

Dated this 17th day of August, 2007.



Donald W. Molloy, Chief Judge
United States District Court