

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SAWTOOTH MOUNTAIN RANCH
LLC, LYNN ARNONE, and DAVID
BOREN,

Plaintiffs,

v.

UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT OF
AGRICULTURE; SONNY PERDUE,
Secretary of Agriculture; UNITED
STATES FOREST SERVICE;
SAWTOOTH NATIONAL FOREST;
JIM DEMAAGD, Forest Supervisor;
SAWTOOTH NATIONAL
RECREATION AREA; KIRK
FLANNIGAN, Area Ranger; FEDERAL
HIGHWAY ADMINISTRATION,

Defendants.

Case No. 1:19-cv-0118-CWD

**MEMORANDUM DECISION AND
ORDER RE: PLAINTIFFS' SECOND
MOTION FOR PRELIMINARY
INJUNCTION
(DKT. 62)**

INTRODUCTION

Pending before the Court is a second expedited motion for a preliminary injunction filed by Plaintiffs Sawtooth Mountain Ranch LLC, Lynn Arnone, and David Boren against Defendants. (Dkt. 62.) Plaintiffs again challenge the approval of and any actions associated with the proposed Stanley to Redfish Trail (“Stanley/Redfish Trail” or

“Trail”), as described in the Decision Memo signed by Kirk Flannigan on June 6, 2017, and seek to halt construction. This motion is premised upon claims asserted under the Environmental Species Act and the Clean Water Act, first alleged in Plaintiffs’ Second Amended Complaint filed on May 8, 2020. (Dkt. 59, 50.)

The parties had a full and fair opportunity to provide briefing supported by several declarations. (Dkt. 62, 66.) Defendants submitted also the Amended Administrative Record (AR), and Plaintiffs filed supplemental materials.¹

The Court conducted a video hearing on June 19, 2020, at which the parties appeared and presented their arguments.² After carefully considering the parties’ arguments, written memoranda, exhibits, the Amended Administrative Record, and relevant case law, and for the reasons that follow, the Court will deny the motion for preliminary injunction. The Court is not persuaded on the present record that Plaintiffs have demonstrated a likelihood of success on the merits of either their Environmental Species Act claim or their Clean Water Act claim.

¹ The United States Forest Service lodged the Revised Administrative Record with the Court on June 10, 2020, at Docket 65. In comparing the Administrative Record lodged at Docket 14 with Docket 65, the AR contains identical documents up through AR 2498. Docket 65 adds documents marked AR 2499 – 2647, and which specifically relate to Plaintiffs’ claims brought pursuant to the Endangered Species Act and the Clean Water Act. (Dkt. 59, 50.) The parties cite also to documents with the Bates prefix SAW, which refer to documents Plaintiffs filed with the Court at Docket Nos. 58-3 and 58-4.

² The Court denied Plaintiffs’ request to present witness testimony during the hearing. (Dkt. 75.)

FACTUAL BACKGROUND³

Redfish Lake and Little Redfish Lake are popular summer destinations located within the Sawtooth National Recreation Area (SNRA) six miles south of the town of Stanley. AR 1127. Visitation to the City of Stanley and the Redfish Lake area occurs primarily between mid-June to Labor Day. AR 0992. During that time, the Redfish Lake Recreation Complex, with its seven campgrounds, boat ramp, rustic lodge and cabins, and day-use facilities serve up to 2,200 people and becomes the largest community in the otherwise sparsely populated area. AR 1127. State Highway 75 connects Redfish Lake to Stanley, with high speed traffic and heavy traffic volumes. AR 1128. There currently is no alternative transportation route connecting Stanley and Redfish Lake, although a snowmobile trail connects the two areas during the winter. AR 1128, 1126.

In the early to mid-1990's, SNRA staff began discussing the idea of constructing a trail connecting Stanley and Redfish Lake to provide an alternate means of travel between the two areas. AR 1126. At that time, the Forest Service envisioned a trail that would provide non-motorized travel, and serve pedestrians, bicyclists, and equestrians. AR 0938. In 2005, the Forest Service purchased a 30-foot-wide "Public Trail Easement"

³ Additional factual background is set forth in the Court's June 13, 2019 Order. (Dkt. 24.)

from the prior owners of Plaintiffs' Property⁴ to connect the proposed trail route between Stanley and Redfish Lake. AR 0698.

In 2012, the Forest Service initiated internal scoping, *see*, e.g., AR 1126, and in early 2014, began external scoping to solicit feedback on the proposed trail project. AR 0921. During the scoping process, public feedback was received in several ways, through surveys circulated by the City of Stanley and the Forest Service, at a public meeting attended by approximately 25 people, and through sixteen (16) written comments. Decision Memo at 9-10. AR 0296 - 0304. Survey results indicated "overall public opinion is greatly in support of a trail between Stanley and the Redfish Lake area." AR 1048. The Stanley/Redfish Trail is supported by the City of Stanley, the Idaho Conservation League, the Sawtooth Association, the Stanley-Sawtooth Chamber of Commerce, and the Idaho Department of Transportation. Phillips Decl. ¶¶ 8-12 and Exs. C-F. (Dkt. 17-2.) Brief of Amicus Curiae. (Dkt. 18.)

The Forest Service's internal and external scoping involved analyzing the potential effects of trail construction on species listed as threatened or endangered under the Endangered Species Act. On April 16, 2014, the Forest Service completed its biological assessment and evaluation of the effects of the Stanley/Redfish Trail on terrestrial

⁴ The Plaintiffs' property ("Property") is located within the SNRA and consists of approximately 1,781.07 acres adjacent to the southern end of the town of Stanley, and westward of State Highway 75. Decl. of Boren ¶ 3. (Dkt. 11-2.) The Property is situated between Redfish Lake and Stanley. The Stanley/Redfish Trail would be about 4.4 miles long, of which about 1.5 miles would traverse the Property within the boundaries of the Public Trail Easement. Proposed Action, Boren Decl. ¶¶ 17-19; Exs. F - H. (Dkt. 11-2.)

wildlife species. AR 2612. The Forest Service concluded the Trail may affect, but would not likely adversely affect, the Canada lynx. AR 2612 – 2639. The United States Fish and Wildlife Service (FWS) concurred. AR 0254 – 0255.

On April 14, 2014, Mark Moulton, the SNRA hydrologist and fisheries and watershed program manager, completed a biological assessment (BA) addressing the effects of the Stanley/Redfish Trail upon listed aquatic species, identified as Snake River sockeye, Snake River spring and summer chinook, Snake River steelhead, Columbia River bull trout, and westslope cutthroat trout. AR 2551 – 2606; 0238 – 0245; Decl. of Mitchell ¶ 3. (Dkt 66-8 at 2.) The BA identified three segments of the proposed trail that would intersect riparian conservation areas (RCAs). AR 0244, 2596. The first segment, located on the Property, would “cross a minor, essentially isolated, seasonally wet area.” AR 0244, 2596.

The second segment impacting an RCA, located on national forest service land, was described similarly, but was noted as having existing fill associated with a former roadway. AR 0244, 2596. “Both of the wet segments are non-forested, and are separated from critical habitat in the Salmon River by substantial distance, complex wetlands, and Highway 75. This isolation would preclude any measurable influence to the RCA of the Salmon River.” AR 0244, 2596. The third segment intersecting an RCA would pass through the RCA “near the confluence of Redfish Lake Creek and the Salmon River,” and would “follow the existing treads of a former roadway and the Rock Shelter

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