

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 13, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

DEFENDERS OF WILDLIFE, et al.,

Plaintiffs,

v.

SUSAN Martin, et al.,

Defendants,

And

IDAHO STATE SNOWMOBILE
ASSOCIATION, et al.,

Intervenor-Defendants.

No. 2:05-cv-00248-RHW

**ORDER DENYING MOTION TO
DISSOLVE AMENDED
PERMANENT INJUNCTION**

(ECF No. 216)

Before the Court is Intervenor-Defendant Idaho State Snowmobile Association’s (ISSA) motion to dissolve the amended permanent injunction. ECF No. 216. The Court heard oral argument via video conference on November 30, 2021. Norman Semanko appeared on behalf of ISSA, Hannah Clements appeared on behalf of the Defenders of Wildlife, and Taylor Mayhall appeared on behalf the United States Forest Service (“Forest Service” or “USFS”) and the United States

1 Fish and Wildlife Service (FWS) (collectively the “Federal Defendants”). The Court
2 has reviewed the briefing, supporting documentation, and the filings in this case and
3 is fully informed. Because ISSA has not met its burden to demonstrate that the
4 injunction should be dissolved, the motion is DENIED.

5 I. BACKGROUND

6 In the permanent injunction order, this Court prohibited snowmobile use in
7 certain areas of the Idaho Panhandle National Forest (IPNF) designated as habitat
8 for the endangered woodland caribou. *See* ECF Nos. 176, 179, 180-3, 181. In the
9 underlying action, the Defenders of Wildlife, a non-profit conservation
10 organization, brought a lawsuit against the Federal Defendants seeking an
11 injunction that would ban snowmobiling¹ in designated areas of the IPNF. *See* ECF
12 Nos. 1, 35. Plaintiffs argued that such activity negatively impacted the habitat of
13 the woodland caribou, an endangered species under the Endangered Species Act
14 (ESA), 16 U.S.C. §§ 1531–44. *See* ECF Nos. 1, 35; 50 C.F.R. § 17.11(h)
15 (identifying woodland caribou (*Rangifer tarandus caribou*) as endangered). ISSA
16 moved to intervene on behalf of the Defendants and the intervention was allowed.
17 ECF No. 34. This Court granted Plaintiff’s motion for a preliminary injunction that
18 enjoined the Federal Defendants from allowing snowmobiling within the “Caribou
19 Recovery Area” inside the INPF (hereinafter the “closure areas”). ECF No. 139, at

20 _____
21 ¹ For the purposes of this order, the Court uses the terms “snowmobiling,”
“recreational snowmobiling,” and “over-snow vehicle (OSV) use” interchangeably.

1 2. After a bench trial, this Court permanently enjoined recreational snowmobile use
2 in the specified areas because the Court determined that this activity was harmful
3 to the endangered woodland caribou. ECF No. 176, at 14–15; ECF No. 181. At the
4 time the Court entered findings of fact and conclusions of law in February 2007,
5 the Court determined that the remaining population of the Selkirk Mountains
6 woodland caribou was between 35 and 45 animals, with most of the population
7 located in southern British Columbia, Canada. ECF No. 176, at 3. The Court held
8 that “Plaintiffs have shown that continued snowmobiling within the area subject to
9 the current injunction as well as the travel corridor prevents, or at the very least,
10 retards, recovery of the woodland caribou within the United States.” *Id.* at 14. The
11 Court found that snowmobiling degrades the late winter habitat of the caribou and
12 significantly impairs the feeding and breeding habits of the species and by
13 allowing snowmobile use, the Federal Defendants were in violation of Section 9 of
14 the ESA, which makes it unlawful to “take” any species listed as endangered. *Id.* at
15 13–15; 16 U.S.C. § 1538(a)(1)(B).²

16 Pursuant to the Court’s permanent injunction order, the Forest Service
17 entered a special closure order that banned snowmobiling in the caribou recovery
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20 ² “Take” is defined broadly under the statute to mean “harass, harm, pursue, hunt,
21 shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such
conduct.” *Id.* § 1532(19).

1 areas of the IPNF. ECF No. 225-2, Exhibit 1 (USFS Order No. F-07-002 (March
2 12, 2007) & USFS Order No. F-06-001 (Nov. 21, 2006)).

3 The permanent injunction order states that the ban on OSV-use will remain
4 in effect until the Forest Service, after conducting ESA-mandated consultation with
5 the FWS, adopts a winter recreation strategy for the IPNF (hereinafter the “winter
6 travel plan”). ECF No. 179 ¶ 3. Nearing almost 15 years since the Court’s
7 permanent injunction order, the Forest Service has still not completed the winter
8 travel plan. ECF No. 225-1 ¶ 4 (Berner Decl.). The Forest Service attributes the
9 delays to litigation and regulatory processes, including protection of the ESA-listed
10 grizzly bear. *Id.* Pursuant to the August 2020 Revised Forest Plan Biological
11 Opinion, the deadline to complete the winter travel plan is by the end of 2023. *Id.*;
12 ECF No. 223-1, at 18 (FWS Biological Op. (Aug. 13, 2020)) (“[T]he IPNF expects
13 to complete a winter travel plan by the end of 2023.”).

14 **A. ISSA’s motion to dissolve**

15 In the present motion, ISSA seeks to dissolve the permanent injunction
16 contending that the injunction is no longer necessary because there are no known
17 instances of woodland caribou in the designated area. ECF No. 216, at 4. Relying
18 on the declaration of fish and wildlife expert Mike Schlegel, ISSA notes that no
19 woodland caribou have been documented in the United States in annual censuses
20 since 2012. ECF No. 216, at 4. Radio tracking data indicated that one collared bull
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1 entered Washington state for about 10 days in late 2014, and in 2019, one
2 remaining cow was captured near Creston, British Columbia and relocated to a
3 maternity pen near Revelstoke, British Columbia. ECF No. 216-3, Exhibit A at 24.

4 ISSA contends that the absence of any individual members constitutes a
5 change in circumstances that warrants lifting the injunction. ECF No. 216, at 6–7.
6 Namely, ISSA argues that this Court should dissolve the injunction pursuant to its
7 authority under Federal Rule of Civil Procedure 60(b) because enforcing the
8 injunction prospectively is no longer equitable. *Id.* at 7.

9 The Federal Defendants and Defenders of Wildlife do not dispute that
10 individual caribou have not been identified in the closure areas in recent years.
11 ECF No. 225, at 2 (acknowledging that presently there are no known woodland
12 caribou residing in the closure areas); *see* ECF No. 222, 6–9 (not disputing that no
13 woodland caribou have been identified recently in the closure areas). Instead, the
14 Federal Defendants and the Defenders of Wildlife argue that ISSA has not
15 demonstrated a change in circumstances that render compliance with the injunction
16 onerous or unworkable, and they contend that ESA consultation is still legally
17 required before areas can be reopened to OSV use.

18 II. LEGAL STANDARD

19 A district court may relieve a party from a final judgment when “applying
20 [the judgment] prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). The
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1 party seeking relief bears the burden to establish that the changed circumstances
2 warrant relief. *Horne v. Flores*, 557 U.S. 433, 447 (2009).

3 The Ninth Circuit has adopted the two-prong standard established by the
4 Supreme Court in *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384–85
5 (1992), to determine if relief under Rule 60(b)(5) is warranted. *Bellevue Manor*
6 *Assocs. v. United States*, 165 F.3d 1249, 1255 (9th Cir. 1999); *United States v.*
7 *Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005). First, the moving party must show
8 a significant change in factual conditions or in the law warranting modification of
9 the order. *America Unites for Kids v. Rousseau*, 985 F.3d 1075, 1097 (9th Cir.
10 2021). Next, if the movant cites significantly changed factual conditions, the party
11 must then show that the changed conditions make compliance with the court’s
12 order “more onerous, unworkable, or detrimental to the public interest.” *Asarco*,
13 430 F.3d at 979 (internal quotation marks omitted); *see also America Unites for*
14 *Kids*, 985 F.3d at 1097–98.

15 III. DISCUSSION

16 A. Standing

17 An intervenor’s right to continue a lawsuit absent the non-intervening party
18 is contingent upon a showing by the intervenor that it fulfills the requirements of
19 Article III. *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 963 (9th
20 Cir. 2015); *Diamond v. Charles*, 476 U.S. 54, 68 (1986). Here, the Federal
21 Defendants do not join ISSA’s motion to dissolve the injunction. ECF No. 225, at

1 2. The Defenders of Wildlife argues that ISSA cannot bring the present motion to
2 dissolve the injunction because ISSA lacks standing. ECF No. 222, at 2–5.

3 To establish Article III standing, a party must demonstrate injury in fact,
4 causation, and redressability. *Organized Vill. of Kake*, 795 F.3d at 963. An
5 association has standing to bring suit on behalf of its members when its members
6 would otherwise have standing to sue in their own right, the interests at stake are
7 germane to the organization’s purpose, and the lawsuit’s resolution does not require
8 the participation of the individual members. *Friends of the Earth, Inc. v. Laidlaw*
9 *Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). ISSA is a statewide
10 organization representing various snowmobile clubs throughout Idaho. ECF No.
11 216-2 ¶ 3 (Mitchell Decl.). Its members snowmobile in the IPNF and wish to
12 snowmobile in the closed areas. *Id.* ¶ 5; ECF No. 216-1 ¶¶ 2–8 (Finney Decl.). The
13 Court finds that the latter two elements are met: the interests at stake are germane to
14 the organization’s purpose of promoting access to Idaho snowmobiling, and the
15 lawsuit’s resolution does not require the participation of the individual ISSA
16 members. Applying the Article III standing analysis to follow, the Court also finds
17 that the individual members would have standing to sue in their own right. Thus,
18 ISSA has met the requirements of associational standing.

19 ISSA claims it experienced harm to recreational value by not being able to
20 snowmobile in the closure areas. ECF No. 219, at 6. The Defenders of Wildlife
21 concedes that ISSA has suffered an injury in fact, ECF No. 222, at 3, and the Court

1 accepts this concession. Next, ISSA meets the causation prong of standing because,
2 but for the permanent injunction, its members would be able to snowmobile in the
3 desired areas. Even though the USFS closures independently serve to prevent ISSA
4 members from snowmobiling in the designated areas, the USFS initially
5 implemented the closures based on this Court’s permanent injunction. ECF No. 225,
6 at 5 (Federal Defendants stating in response brief: “Pursuant to this Court’s 2007
7 entry of a permanent injunction against snowmobiling . . . the Forest Service issued
8 a closure order on March 12, 2007). The Court finds that ISSA’s alleged harm is
9 traceable to the permanent injunction.

10 Lastly, the Defenders of Wildlife contends that the harm suffered by ISSA
11 will not be redressed by dissolving the injunction because the area is closed by
12 separate orders of the USFS. ECF No. 222 at 3–4. It contends that if the injunction is
13 dissolved it is merely speculative as to whether snowmobiling would be allowed. To
14 demonstrate redressability, the plaintiff must show that it is “likely, as opposed to
15 merely speculative, that the injury be redressed by a favorable decision.” *M.S. v.*
16 *Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018) (quoting *Lujan v. Defenders of Wildlife*,
17 504 U.S. 555, 561 (1992)). The redressability prong does not demand that the court-
18 ordered relief completely redress all injury. *Larson v. Valente*, 456 U.S. 228, 244
19 n.15 (1982). Although the relief ISSA seeks will ultimately depend on whether the
20 USFS amends or rescinds the closure orders, ISSA cannot obtain such relief if the
21 present injunction remains in place. If this Court were to dissolve the injunction, the

1 USFS would be able to consider removing the closure orders. Thus, granting ISSA
2 the relief requested would be a form of partial relief for ISSA. The Court finds that
3 the redressability prong has been met.

4 For these reasons, the Court finds that ISSA has demonstrated Article III
5 standing to bring the present motion.

6 **B. Motion to Dissolve**

7 **1. The closure areas are still critical habitat of the woodland**
8 **caribou.**

9 The Court finds that the closure areas subject to this Court's permanent
10 injunction are still critical habitat for the caribou.

11 To show that the injunction should be dissolved, ISSA must first demonstrate
12 a significant change in factual conditions or in the law warranting modification of
13 the order. *America Unites for Kids*, 985 F.3d at 1097. ISSA contends that when the
14 injunction was issued, some caribou lived in the closure areas and now they have all
15 since died or been relocated. ECF No. 216, at 8. Indeed, the record demonstrates that
16 the population of woodland caribou have regrettably declined, and that since 2012,
17 there have been few, if any, crossings of caribou from Canada into the United States.
18 *See* ECF No. 216-3, Exhibit A at 24 (identifying only one collared bull entering into
19 Washington state in 2014 for 10 days). Thus, ISSA has shown a change in factual
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1 circumstances.³ Next, the Court must determine if these changes are so significant to
2 warrant lifting the injunction.

3 ISSA must demonstrate that the change in circumstances makes compliance
4 with the injunction more onerous, unworkable, or detrimental to the public interest.
5 *Asarco*, 430 F.3d at 979.

6 The Supreme Court has held that an injunction is detrimental to the public
7 interest under Rule 60(b)(5) when enforcement of the original order is no longer
8 supported by an ongoing violation of federal law. *Horne v. Flores*, 557 U.S. 433,
9 454 (2009). The ESA requires federal agencies to ensure that their actions do not
10 result in the “destruction or adverse modification of the habitat” of an endangered
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12 ³ ISSA seemingly asserts that the woodland caribou are no longer listed as an
13 endangered species because they have been extirpated. ECF No. 216, at 3 (“In
14 2019, the U.S. Fish and Wildlife Service issue[d] a Final Rule, determining that the
15 southern Selkirk Mountains population of woodland caribou could not be
16 independently listed as endangered under the ESA . . .”). To the contrary, the
17 FWS Final Rule reaffirms the designation of southern mountain caribou’s habitat
18 of approximately 30,010 acres located in northern Idaho and northeastern
19 Washington. Endangered and Threatened Wildlife; Endangered Species Status of
20 Southern Mountain Caribou Distinct Population [hereinafter “Final Rule”], 84 Fed.
21 Reg. 52598-01, 52598 (Oct. 2, 2019). Although the subspecies was previously
listed as the southern Selkirk Mountains population of woodland caribou, the final
rule explains that this previous listing failed to consider the “Southern Selkirk
caribou’s” significance relative to the appropriate taxon. *Id.* In other words, the
appropriate distinct population segment (DPS) analysis should have been
conducted relative to the subspecies woodland caribou (*Rangifer tarandus caribou*)
instead of the mountain caribou metapopulation. *Id.* at 52599, 52601 (“[W]e now
consider the southern Selkirk Mountains population of woodland caribou part of
the larger southern mountain caribou population.”).

1 species. 16 U.S.C. § 1536(a)(2). The same provision also requires federal agencies
2 to ensure their actions do not “jeopardize the continued existence” of a listed
3 species; and this applies to actions that would “reduce appreciably the likelihood of
4 both the survival and *recovery*” of the species. *Id.*; 50 C.F.R. § 402.02 (emphasis
5 added); *see also Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917,
6 931–32 (9th Cir. 2008) (concluding jeopardy provision requires the agency to
7 consider both recovery and survival impacts). The Ninth Circuit has held that the
8 language, history, and structure of the ESA demonstrate a strong public interest in
9 favor of protecting endangered species. *Nat’l Wildlife Fed’n v. Burlington N. R.R.*,
10 23 F.3d 1508, 1511 (9th Cir. 1994).

11 ISSA argues that because all woodland caribou have died in the area or have
12 been relocated, permitting OSV-use would no longer violate the ESA. The Federal
13 Defendants counter that a transient caribou could still pass through the area and the
14 area is still designated as critical habitat. ECF No. 225, at 5; Recovery Outline
15 Southern Mountain Caribou Distinct Population Segment of Woodland Caribou
16 [hereinafter “Recovery Outline”], at 8, 15, available at
17 [https://ecos.fws.gov/docs/recovery_plan/Southern_Mountain_Caribou_Recovery_O
18 utline Signed 20191127.pdf](https://ecos.fws.gov/docs/recovery_plan/Southern_Mountain_Caribou_Recovery_Outline_Signed_20191127.pdf) (last visited Dec. 6, 2021).

19 In October 2019, the FWS reiterated the endangered listing of the woodland
20 caribou and identified the areas in question as critical habitat. Final Rule, 84 Fed.
21 Reg. at 52598.

1 We have determined that the approximately 30,010 acres (12,145
2 hectares) designated as critical habitat on November 28, 2012, for the
3 southern Selkirk Mountains population of woodland caribou is
4 applicable to the U.S. portion of the endangered southern mountain
5 caribou DPS, and as such, *reaffirm the existing critical habitat of the*
6 *DPS.*

7 *Id.* (emphasis added). This finding by the FWS makes clear that the closure areas are
8 still considered critical habitat of the endangered woodland caribou.

9 Furthermore, the FWS Recovery Outline identifies two ways in which the
10 woodland caribou may return to the presently unoccupied area in the United States:
11 (1) if a transient individual crosses the international border; or (2) there is a
12 management decision to reintroduce caribou back into the southern Selkirk
13 Mountains. Recovery Outline, at 15. By granting ISSA’s requested relief to lift the
14 injunction, the Court would prevent either of these opportunities of future recovery
15 of the species.

16 Because the area in question is still critical habitat of the woodland caribou,
17 ESA protection is still justified. Allowing OSV-use would run afoul of the ESA’s
18 prohibition of agency action that results in the destruction or modification of the
19 species’ habitat. *See* 16 U.S.C. § 1536(a)(2). It would also “reduce appreciably the
20 likelihood of . . . recovery” of the caribou. 50 C.F.R. § 402.02.

21 When considering the strong public interest in protecting endangered species,
see National Wildlife Federation, 23 F.3d at 1511, ISSA has failed to show that
allowing the permanent injunction to remain would be detrimental to the public

1 interest. Similarly, ISSA has failed to show that compliance with the injunction is
2 more onerous or unworkable. Relief under Rule 60(b)(5) is warranted when the
3 prospective application of the order is inequitable, not when “it is no longer
4 convenient to live with the terms” of the order. *Rufo*, 502 U.S. at 383. ISSA has not
5 met this burden, especially in light of the fact that it is not the party enjoined by the
6 permanent injunction.

7 **2. ESA-consultation as contemplated in the permanent injunction**
8 **is still required.**

9 The Defenders of Wildlife argues that the USFS must still fulfill its
10 consultation obligation under the ESA prior to reauthorizing snowmobiling in the
11 closure areas. ECF No. 222, at 6. The Court agrees.

12 The purpose of the consultation process is for the USFS to comply with its
13 duty to avoid jeopardizing the survival or recovery of the southern mountain
14 caribou. 16 U.S.C. § 1536(a)(2). As stated above, the closure areas are still critical
15 habitat for the woodland caribou, and accordingly, the ESA requires the necessary
16 consultation.

17 This Court is troubled that the winter travel management plan contemplated in
18 the 2007 permanent injunction order has not been completed after 14 years and is
19 still two years away from completion. Nonetheless, the law mandates the
20 consultation process, and a deadline is not prescribed by the ESA. *See id.*

1 **IV. CONCLUSION**

2 For the reasons stated above, ISSA’s motion to dissolve the permanent
3 injunction is denied.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Intervenor-Defendant’s Motion to Dissolve the Amended Permanent
6 Injunction, **ECF No. 216**, is **DENIED**.

7 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
8 Order and provide copies to counsel.

9 **DATED** this December 13, 2021.

10 s/Robert H. Whaley
11 **ROBERT H. WHALEY**
12 Senior United States District Judge
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