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

WILDEARTH GUARDIANS, et al., Plaintiffs, and SWAN VIEW COALITION, et al., Consolidated Plaintiffs, vs. KURTIS E. STEELE, et al., Defendants, and DAVID BERNHARDT, et al., Consolidated Defendants, and MONTANA LOGGING ASSOCIATION, et al., Defendant-Intervenors.	Lead Case No. CV 19–56–M–DWM Member Case No. CV 19–60–M–DWM ORDER

This case concerns the Revised Forest Plan for the Flathead National Forest. Plaintiffs are environmental organizations that challenged decisions by the United States Forest Service and the United States Fish and Wildlife Service (collectively

"Federal Defendants") stemming from the Revised Plan. The Montana Logging Association and the American Forest Resource Council (collectively "Defendant-Intervenors") intervened in the action, and the Court held hearings on the parties' cross-motions for summary judgment in May 2021. (*See* Doc. 115.)[1] An opinion was issued in June 2021 that granted Plaintiffs' relief on a handful of the claims brought under the Endangered Species Act ("ESA") and remanded the provisions of the 2017 Biological Opinion ("the 2017 BiOp") that violated the Endangered Species Act without vacatur. *See WildEarth Guardians v. Steele*, 2021 WL 2590143, *23 (D. Mont. June 24, 2021). Plaintiffs have since filed a motion to amend or correct the judgment. (Doc. 127.)

Plaintiffs ask the judgment be amended by vacating what they identify as "unlawful" provisions of the Revised Plan; specifically, Plaintiffs seek to vacate Revised Plan Standards FW-STD-IFS-01 to -04, Guidelines FW-GDL-IFS-01 and -02, Guideline FW-GDL-CWN-01, and seven glossary definitions. (Doc. 128 at 6.) Plaintiffs also request remand of portions of the Revised Plan, either as alternative relief or in addition to vacatur. For the reasons explained below, Plaintiffs' motion is denied.

LEGAL STANDARDS

Under Rule 59(e) of the Federal Rules of Civil Procedure, there are four

[1] Record citations are to the lead case, CV 19–56–M–DWM.

typical grounds on which a motion to alter or amend the judgment may be granted: "(1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). While "Rule 59(e) permits a court to alter or amend a judgment, [] it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (quotation marks omitted).

ANALYSIS

The relief Plaintiffs request is, if not a mirror image of the relief they requested in their initial motion for summary judgment, at least a very near reflection of it. In their motion for summary judgment, Plaintiffs requested that the Court vacate Revised Plan Standards FW-STD-IFS-01 to -04, Guidelines FW-GDL-IFS-01 and -02, Guideline FW-GDL-CWN-01, and seven glossary definitions, along with a request for broader relief such as vacatur of "any other provisions that replace or supersede Amendment 19 to the 1986 Land Management Plan for the Flathead National Forest" and that the Court vacate Appendix B, Figure B-12, and any reference to Figure B-12. (Doc. 76 at 4.) Here, Plaintiffs

request slightly narrower relief in that they request vacatur of the same Standards and Guidelines and the same glossary definitions of the Revised Plan but omit a request for vacatur of the other requested relief. (Doc. 128 at 6.)

Ultimately, Plaintiffs' present motion is an impermissible attempt to relitigate old matters. Fundamentally, Plaintiffs seem to think the Court misunderstood the scope of its own remedy or based its remedy on representations that have now been proven untrue. The Court did neither. The previous order and opinion meant to leave the Revised Plan in place while the agencies re-examined the 2017 BiOp and allow the agencies to proceed under the Revised Plan so long as that progression was based on the agencies' determination that the projects under the Revised Plan did not violate the ESA. *WildEarth Guardians*, 2021 WL 2590143 at *22–23. That seems to be precisely what the agencies are now doing.

In large part, Plaintiffs' present motion focuses on the allegation that a failure to amend the judgment will result in manifest injustice. According to Plaintiffs, Federal Defendants' post-judgment conduct indicates that they have not undertaken site-specific evaluations of projects that may include road building activities. (Doc. 128 at 10–12.) But the potential that these projects "threaten to add 69.8 miles of roads to the Flathead National Forest system" does not result in the "manifest injustice" required to alter or amend the judgment. (*See id.* at 10.) All the planned projects and most of the approved projects under the Revised Plan

are on hold until the Fish and Wildlife Service completes its re-evaluation of the 2017 BiOp, and the agencies have determined that any new road construction in the interim will be so limited that the construction will not have significantly adverse effects on the grizzly bear population. (Doc. 138 at 10.) While Plaintiffs may disagree with Federal Defendants' conclusion as to the effects of the limited road building activity that is apparently likely to proceed even while the 2017 BiOp is undergoing re-evaluation, they are free to bring site-specific challenges in an attempt to remedy those disagreements. But the present motion is not the proper vehicle for Plaintiffs to raise these complaints.

Additionally, Plaintiffs attempt to point to newly discovered or previously unavailable evidence in support of their motion to amend the judgment. But this attempt is unsuccessful for several reasons. Plaintiffs point to email responses from Federal Defendants about agency developments since the June 2021 order and argue that these responses support the argument that manifest injustice will result absent vacatur and remand of portions of the Revised Plan. While this post-judgment correspondence is evidence that was previously unavailable to Plaintiffs given the nature of its timing, the fact that Federal Defendants are "working to respond to the issues identified in the Revised Plan" and at the same time planning to move forward with certain projects under the Revised Plan, (Doc. 128 at 11), does not compel amending the judgment. As noted above, the order intended to

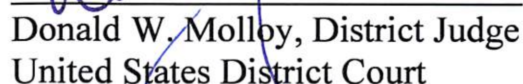
give the agencies an opportunity to re-evaluate the 2017 BiOp while also allowing projects to proceed based on site-specific evaluations. Accordingly, this evidence further demonstrates Plaintiffs' disagreement with Federal Defendants' conclusions but again, disagreement with the agencies' assessments is not grounds for amending the judgment. Moreover, the relevance of allegedly "previously unavailable" evidence that Plaintiffs attached to their corrected reply is diminished for several reasons, including that Federal Defendants had no opportunity to respond to it.

In sum, Rule 59(e) is not an enforcement mechanism, and in many ways the Plaintiffs' request is outside the scope of the Court's authority under Rule 59. If Plaintiffs disagree with the way Federal Defendants are proceeding on their site-specific evaluations pursuant to the June 2021 order, they are free to challenge those projects. But the present motion attempts to relitigate matters previously decided.

CONCLUSION

For the reasons stated above, IT IS ORDERED that Plaintiffs motion to alter or amend the judgment, (Doc. 127), is DENIED.

DATED this 10th day of December, 2021.



13:30 P.M.

Donald W. Molloy, District Judge
United States District Court