



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

National Environmental Policy Act/Wildfire Area Tree Removal: Federal Appellate Court Addresses Whether U.S. Forest Service Considered Reasonable Range of Alternatives

10/23/2025

The United States Court of Appeals, Ninth Circuit (“Ninth Circuit”) addressed in an October 17th Memorandum an issue arising under the National Environmental Policy Act (“NEPA”). *See American Whitewater, et al., v. U.S. Forest Service*, 2025 WL 2945591.

The issue considered was whether the United States Forest Service (“Service”) violated NEPA by failing to analyze a reasonable range of alternatives when it approved projects to cut down trees burned by wildfires on National Forest land in 2020 and 2021 (collectively, the “Project”).

The Service analyzed a range of alternatives in the Project's NEPA Environmental Assessments (collectively, “EA”).

The Ninth Circuit notes that to determine whether an agency considered a reasonable range of alternatives, the questions to ask include:

1. Whether the statement of purpose and need was reasonable,” and
2. Whether the range of alternatives considered was reasonable in light of that purpose and need.

The Ninth Circuit determines the Project’s purpose and need statement was reasonable, noting:

...As Whitewater admitted, the statement itself was not unreasonably narrow.

Further, the Service’s choice to prioritize safety in framing the Project's purpose and need was reasonable, even if it ultimately narrowed the range of alternatives that the agency considered.

The range of alternatives was also deemed reasonable even if it only included two alternatives in detail. Similar NEPA reviews were stated to have been upheld as long as the agency was determined not to have failed to consider a reasonable alternative.

The Ninth Circuit also held that the Service:

- Did not improperly tier to the agency's "Hazard Tree Guidelines" (because they are not substantive and were properly incorporated by reference).
- Took a hard look at the Project's likely impacts.
- Impacts on wildlife, including the northern spotted owl.
- Cumulative effects.
- Cited a specialist report and its underlying data to argue that the agency took a hard look at the Project's likely impacts on rivers protected by the Wild and Scenic Rivers Act, but failed to provide adequate reference to such material within the EA which was deemed harmless because it did not materially impede NEPA's goals.

A copy of the Memorandum can be downloaded [here](#).