

Appeals Court Rules against Forest Service **The Associated Press**

The U.S. Forest Service violated federal environmental laws when it failed to fully consider the effects of logging and road building in the Lamb Brook area of the Green Mountain National Forest, the U.S. Second Circuit Court of Appeals in New York ruled Monday. In a decision that handed victory to a coalition of Vermont environmental groups and also made some concessions to the Forest Service, the appeals court sharply criticized the Forest Service for not doing its job. The three judge panel said the Forest Service must review its decision to log in parts of the 5,500-acre roadless area in Windham and Bennington counties, and more actively assess the effects on the black bear and migratory songbirds that environmentalists said would be harmed by logging and road-build ing.

"In sum, we agree that the Forest Service violated NEPA (the National Environmental Policy Act) by failing to adequately consider all relevant environmental factors prior to making its finding of no significant impact," the judges wrote. "The Forest Service's determination that preparation of an Environmental Impact Statement was not necessary, based on the record before it, was therefore arbitrary and capricious, they added. "Arbitrary and capricious" is the legal standard the judges had to apply. In essence, the decision gives the Forest Service another chance to make its environmental case on why the effects of logging Lamb Brook would not be damaging to black bears and migratory songbirds, but environmentalists said they would challenge again.

"The Forest Service has a long way to go; the Forest Service has to start from square one," said Stephen Saltonstall, the attorney for the coalition of environmental groups, which was led by the tiny Green Mountain Forest Watch and included the National Audubon Society, the Wilderness Society and the Sierra Club. Saltonstall said he hoped that James Barthelme, the forest supervisor in Vermont, would decide that Lamb Brook needed protection, not logging. "Hopefully he'll decide to let Lamb Brook alone," said Saltonstall, who said his coalition was ready to pre sent their wildlife experts to say the impact on bears and birds would be significant and irreversible.

Helen Toor, the assistant U.S. attorney who handled the case for the government, said she was aware there was a decision, but hadn't seen it and declined comment. But environmentalists were claiming success after their three year fight in the courts. "This is a significant victory for us and for the forests and creatures of Lamb Brook," said Mathew Jacobson, executive director of Green Mountain Forest Watch in Brattleboro. "The court ruled that the Forest Service had hidden the effects of its proposal and that's against the law," said Jacobson, who has been a thorn in the side of the Forest Service for the past four years, challenging timber sales and other plans. "The Forest Service thinks they can have their forest and eat it too." "I think that this points to just how important the remaining wild lands are on the Green Mountain National Forest and the Forest Service should use this opportunity not to develop and log these areas," he said.

Jacobson said the ruling stopped short of being precedent-setting for the entire 340,000-acre forest, but he noted it was the first time the Forest Service had been challenged in court in New England, unlike the western states, where it has been found in violation of environmental laws numerous times. "We think that sweeping environmental problems under the rug is standard operating procedure for the Forest Service," he added. The panel of three judges, who heard the appeal in February, did n't agree with some arguments made by the environmentalists, and it sent the case back to U.S. District Judge J. Garvan Murtha in Brattleboro.

The Second Circuit said that Murtha overstepped his bounds in determining the impacts of the logging. "The question is substantive, and consequently not one within the purview of the district court," the appeals court wrote. "The district court overstepped the narrow confines of judicial review when it jumped to the con clusion

that impact of the project would be "arguably significant" they wrote.

Members of the coalition put together by Green Mountain Forest Watch included the Wilderness Society, Conservation Law Foundation, the Sierra Club, the National Audubon Society, the Vermont Audubon Council, RESTORE:

The North Woods, and four individuals, including Jacobson, James Northup, the author of the current Green Mountain National Forest plan, and Tyler Resch and Ellen Viereck, both of Bennington. Saltonstall now is a staff attorney with CLF.

Jacobson said challenging the Forest Service was having an effect: last year 2.4 million board feet of timber was cut in the national forest, which represents 2 percent of the state's timber base. He said the Forest Service had wanted to cut 16 million board feet.