Analysis

Biodiversity/Recreational/Tribal Compatibility

To analyze the compatibility of land use with biodiversity, the Tribal Coalition released a laundry list of potential effects from multiple use expansions. Along with environmental damages, and endangered species risk, they claim clouding by sulfur dioxide threatens star-gazing tourism. Because of these effects, the plaintiffs assert that under the MUSY, economic expansion is incompatible with preservation of productivity of those lands.[1] While it is right to say productivity is more valuable than economics, they fail to acknowledge procedural requirements that undergird land expansion.

Appropriately, the agencies use consistent precedents in *Sierra Club v Marita* and *Sierra Club v. FERC* establishing that if an "EIS determined by the DOI and DOA's quality of evidence is not unreasonable, they should have foresight, care, and technology to uphold private leases."[2] Consequently, precedent supports authority of agencies to address concerns case by case as land is put to use.

The agencies have provided "reasonable evidence", even going so far as to demonstrate how grazing can be sustainable. In fact the defendant's procedural explanations give credence to "foresight" and "compatibility".

For mining, the Supreme Court, in *United States v Shoshone Tribe of Indians* gave mineral discovery rights to Tribal Trusts.[3] Those requirements mean that, of the multiple uses for tribal-adjacent lands, mining could be restricted. Likewise, MUSY requires that multiple-use land regulations are "supplemental to, but not in derogation of , the purposes for which the national forests were established as set forth in the Act of June 4, 1897 (16 U.S.C. 475)".[4] While that may limit certain activities, it does not limit all multiple uses such as "outdoor recreation, range, timber, watershed, and wildlife and fish purposes."[5] Hence, logging could be permissible.

Balancing Discretion

While the Tribal Coalition identifies how FLPMA requires "no permanent impairment," they have not demonstrated how the rule's expansion itself would cause permanent impairment.[6] Likewise, even if ESA Section 7A requires consultation with

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[1] 16 U.S.C. § 528 (as amended in 1960 by Pub. Law 86–517)
[2] *Sierra Club v Marita*, 46 F.3d 606 (7th Cir. 1995), and *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017)
[3] *United States v. Shoshone Tribe of Indians*, 304 U.S. 111 (1938)
[4] 16 U.S.C. § 528 (as amended in 1960 by Pub. Law 86–517)
[5] 16 U.S.C. § 528 (as amended in 1960 by Pub. Law 86–517)
[6] 43 U.S.C. § 1782(a) (1976)

the USFWS, expansion itself does not harm specific fish.[7] The DOI and DOA, explain when permits are made for land use, fish could then be identified and they are not exempt from the APA or ESA.[8] For example, in national forests, section 1604 of the NFMA still includes further development planning.[9] Thus, public comment would still happen and agencies could issue rules later on to comply.[10]

Additionally, the Sierra Club and Earth Justice contend that under NEPA, the agencies have not taken a "hard look" at alternatives.[11] While they are right there is no hard look on specific use of specific lands, the EIS should only be about the expansion itself, not applications of land. Given that, Public Lands for Public Use correctly identifies that there are no alternatives for expansion because "industries need the resources public lands have."

Designation for Climate Change and Biodiversity

The requirements in the Energy Policy Act identified by the Sierra Club and Earth Justice are correct that public lands have an obligation to renewable projects.[12] However, they fail to demonstrate how expansion is mutually exclusive with fulfilling those requirements.

While *Alaska v United States Forest Service* established a roadless rule for Alaskan forests, precedent is difficult to apply given no evidence about carbon releases of specific lands under the discussed expansion.[13]

Broadly, it is likely new carbon sequestration programs with a 327 gigaton capacity on public lands are capable of compensating for the 10.3 gigatons of logging carbon releases according to the agencies. Thus, without more localized evidence, the plaintiff has not proven the agencies' actions unreasonably harm climate or biodiversity projects. Thus, under Chevron, the court defers to administrative expertise.[14]

Decision

For the foregoing reasons, I affirm the new rule to increase the amount of Multiple-Use Lands that can be leased to private interests byt the Department of Interior and Department of Agriculture.

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[7] 16 U.S.C. § 1536(a)(2)
[8] 5 U.S.C. § 552
[9] 16 U.S.C. § 1604
[10] 5 U.S.C. § 553 (1976)
[11] 42 U.S.C. §§ 4321-4370m
[12] 42 USC §13201 et seq. (2005)
[13] *Se. Al. Conservation Council v. U.S. Forest Serv.,* 413 F. Supp. 3d 973 (D. Alaska 2019)
[14] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)