

JAN 06 2009

Swan View v Barbouletos 07-35065

CALLAHAN, Circuit Judge, concurring in part and dissenting in part:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

I agree that the case must be remanded to the Forest Service to more clearly articulate its standard for evaluating when grizzly bears' needs compete with land use values under the Flathead Forest Plan. However, because on this record it appears that leaving the ten culverts alone would be consistent with the Interagency Grizzly Bear Guidelines under any standard, I agree with the district court that the Forest Service's action regarding the culverts was not "arbitrary and capricious," and should be affirmed.