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[Home](#) > [News](#) > [Regional](#) > Group seeks order against Bush official
**News**

Wyoming  
 Legislature Update  
 Jackson  
 Regional  
 National  
 World  
 AP News  
 UPI News  
 Business  
 Opinion  
 Sports  
 Obituaries  
 Features  
 Parade Magazine

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## Group seeks order against Bush official

By **JEFF BARNARD**  
 AP environmental writer

A watchdog group has asked a federal judge in Montana to send the Bush administration's top forest official to jail for contempt of court, arguing that the U.S. Forest Service has missed the deadline for a complete environmental analysis of dropping fire retardant on wildfires. [oas:casperstartribune.net/news/regional:Middle1]

Agriculture Undersecretary Mark Rey responded Thursday that the environmental assessment the Forest Service submitted was as complete as it could be. He said the service expected to find no significant harm from continuing to use fire retardant, but the U.S. Fish and Wildlife Service needs more time to consider the effect on endangered species.

"I thought our objective here was to show we could use retardant in an environmentally safe fashion to protect homes, people and families," Rey said. "I think what we submitted to the judge so far demonstrates that."

Andy Stahl, director of the Forest Service Employees for Environmental Ethics, said the assessment was missing a crucial element, a finding of no significant environmental impact.

Without that, under the National Environmental Policy Act the Forest Service needed either to produce a higher-level environmental impact statement, or to declare the issue fell under an exception, Stahl said.

"What he has here on his homework is an incomplete, which under the law is the same as an F," said Stahl.

Stahl said he was not aware of any administration official actually going to jail over a contempt finding in an environmental case. Former Interior Secretary Gale Norton did not go to jail over a contempt finding in an Indian trust funds case. It was reversed on appeal.

U.S. District Judge Donald W. Molloy has yet to rule on whether the filing meets the terms of his order in August setting a Wednesday deadline for the Forest Service to comply with the National Environmental Policy Act.

If he finds the deadline has not been met, a hearing is scheduled Monday in U.S. District Court in Missoula, Mont., for Rey to show why he should not be found in contempt.

The legal sparring arose out of a lawsuit filed in 2003 by Stahl's group, based in Eugene, Ore., that demanded the Forest Service analyze the harm from ammonium phosphate, a fertilizer that kills fish and that is the primary ingredient in retardant dropped on wildfires.

The lawsuit followed a fire retardant drop into Fall Creek in Central Oregon that killed about 20,000 fish.

In 2005, Molloy ruled that the Forest Service violated the Endangered Species Act and the National Environmental Policy Act when it failed to go through a public process to analyze the potential environmental harm.

In February 2006, the judge gave the Forest Service until Aug. 8 to do the analysis and said that if the service needed more time it should ask well in advance and not just before the deadline.

When the Forest Service filed a last-minute request for more time, Molloy set a new deadline for Wednesday, saying he didn't expect the Forest Service to meet it.

After reviewing the documents filed by the Forest Service, Stahl said the watchdog group filed a motion to find Rey in contempt of court, and for the judge to order "an appropriate coercive sanction."

Stahl said the judge can't fine the Forest Service, so it hopes he will send Rey to jail until the environmental analysis is done.

The Fish and Wildlife analysis is not expected until January.

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