



File Code: 1570/1920

Date: July 15, 2009

Route To:

Subject: Compliance with adverse District Court Decision in Citizens for Better Forestry v. United States Department of Agriculture about the 2008 planning rule

To: Regional Foresters

On June 30, 2009, the United States District Court for the Northern District of California issued a decision in Citizens for Better Forestry v. United States Department of Agriculture, No. C 08-1927 CW (N.D. Cal. June 30, 2009). The court held the adoption of the planning rule published at Title 36, Code of Federal Regulations 219 (36 CFR 219) violated the National Environmental Policy Act by failing to take a hard look at the effects of the rule and violated the Endangered Species Act by failing to consult and obtain concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The court enjoined us from implementing and using the 2008 planning rule and remanded the matter to us for further proceedings. The court further ruled that the Agency may choose whether to reinstate the 2000 planning rule or the 1982 planning rule. The Government has not yet determined whether to appeal the District Court's June 30, 2009 decision to the Ninth Circuit Court of Appeals. A copy of the court's decision is available online at http://www.fs.fed.us/emc/nfma/includes/2009_06_30_SJ_Order.pdf.

Whether the Government appeals or decides to undertake a new rulemaking, there must be a rule in effect in the meantime. The Department has determined that the 2000 planning rule is now in effect, including its transition provisions as amended in 2002 and 2003 and as clarified by interpretative rules issued in 2001 and 2004, which allows you to use the procedures of the 1982 planning rule to amend or revise plans. The Agency is now in the 2000 planning rule transition period. The 1982 planning rule and the 2000 planning rule as amended and clarified are available online at http://www.fs.fed.us/emc/nfma/2000_planning_rule.html

Units that were amending or revising plans using the procedures in the 1982 planning rule as allowed by the transition provisions of the 2008 planning rule are unaffected, except that the authority for using the procedures of the 1982 planning rule is now found in the transition provisions of the 2000 planning rule, as amended. See the 2000 planning rule at section 219.35(b).

As explained by Appendix A to section 219.35 (the 2001 interpretive rule) the appeal or the objection procedures may be applied when amending or revising plans during the transition period between planning rules. The appeal procedures, formerly in the Code of Federal Regulations at 36 CFR 217, are available online at <http://www.fs.fed.us/emc/applit/includes/PlanAppealProceduresDuringTransition.pdf>

Units that were revising plans using the 2008 planning rule may not continue those revisions under the 2008 planning rule. For example, you may not issue a proposed plan for comment, issue a predecisional plan for a 30-day objection period, or respond to comments or objections. Plan revisions in progress under the 2008 rule will need to be reviewed to see what changes are



appropriate to bring them into compliance with the direction in this letter. Ecosystem Management Coordination (EMC) staff will coordinate with the regions in this effort. If you have any further questions, units are encouraged to consult with the EMC staff.

I appreciate the effort you have been making to collaborate with the public as you revise your plans and I want you to maintain and build on the collaborative relationships you have developed. You should continue working with the public on planning activities and analyses that are independent of any specific planning rule. An enclosure to this letter sets out the way you continue working with the public.

I appreciate your efforts to manage responsibly National Forest System lands in conformance with applicable laws, regulations, and the court's decisions. The Ecosystem Management Coordination staff will continue to coordinate with the Department of Justice and the Office of the General Counsel and keep you apprised of further developments. If you have questions about the guidance as applied to the forests in your region, please contact Richard Rine (202) 205-1022, or Ricardo Garcia, Ecosystem Management Coordination staff, at (202) 205-0895.

/s/ Joel D. Holtrop
JOEL D. HOLTROP
Deputy Chief, National Forest System

Enclosures

cc: Station Directors
Deputy Chiefs
WO Staff Directors

