



**File Code:** 1570

**Date:** December 19, 2007

**Subject:** Interim Direction and Data Call Based on Adverse Ninth Circuit Decision in Sierra Club v. Bosworth (05-16989) Invalidating the Hazardous Fuels Reduction Categorical Exclusion

**To:** Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Directors

**REPLY DUE JANUARY 10, 2008**

On December 5, 2007, the U.S. Ninth Circuit Court of Appeals declared the Hazardous Fuels Reduction Categorical Exclusion (HFRCE) developed under the President's Healthy Forests Initiative invalid and indicated that it will order the U.S. Eastern District of California Court to:

1. Issue an injunction against further use of the HFRCE.
2. Determine which activities approved after October 8, 2004, under the HFRCE should be enjoined.

The Circuit's ruling does not extend to other categorical exclusions.

While the Circuit's order does not immediately enjoin use of the Hazardous Fuels Reduction Categorical Exclusion, I am directing the following steps be taken while the Forest Service considers petitioning for reconsideration of this ruling:

1. Refrain from issuing any new decisions approving hazardous fuel reduction projects that rely on the HFRCE set forth in FSH 1909.15, chapter 30, 31.2(10).
2. Refrain from advertising or awarding contracts to implement decisions made after October 8, 2004, approved under the HFRCE.

To determine how to comply with the District Court's forthcoming injunction, please provide us with the following information (in chronological order) regarding HFRCE projects that were approved solely under the HFRCE since its adoption on June 5, 2003:

- Project name
- National forest
- Region
- Approval date
- Number of acres treated – mechanical
- Number of acres treated – prescribed fire
- Whether the project is located in a wildland urban interface area (WUI)
- Completion date (if applicable)
- If not complete, estimated percentage completed to date



- If not complete, whether there is an elevated fire risk as a result of the partial completion of the project (such as down slash left untreated)

Please use the enclosed spreadsheet to record this information. We anticipate the District Court will require us to provide this information as it determines the scope of the injunction. This information will also be necessary as we evaluate our legal options to seek a rehearing in this case. Please submit this information to National Litigation Coordinator Eric Olson at [ecolson@fs.fed.us](mailto:ecolson@fs.fed.us) by close of business, Thursday, January 10, 2008. If you have any questions, you may contact Mr. Olson at (202) 205-1014. More information will be provided as it becomes available.

*/s/ Abigail R. Kimbell*  
ABIGAIL R. KIMBELL  
Chief

Enclosure