



US Forest Service Fire and Aviation Management Update



September 2008

SUBJECT: Aerial Application of Fire Retardant

Issue: Decision, Lawsuit, and Implementation

- In February 2008, the Chief of the U.S. Forest Service issued a decision that allows Incident Commanders and fire managers to continue to use aerially applied fire retardant to fight fires on National Forest System lands. The decision allows use of retardant under the 2000 guidelines when conditions warrant its use.
- The February decision is the subject of a new lawsuit that challenges the conclusions regarding impacts made by the Forest Service (FS), the Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS). The FS has not been enjoined from the use of fire retardant. The lawsuit also alleges that the FS failed to fully consider “connected actions” to the use of fire retardant.
- Implementation of the Chief’s decision is ongoing for the 2008 fire season. Implementation involves continuation of the 2000 retardant use guidelines, additional reporting requirements, and local-level collaboration between the FS and the FWS and the NMFS.
- Information regarding the first season of implementation should be available in the fall of 2008.

Detailed information and documentation regarding this analysis may be found at:

<http://www.fs.fed.us/fire/retardant/>

Background: In 2000, the Forest Service and other firefighting agencies established guidance for retardant application as contained in, *Guidelines for Aerial Application of Fire Retardant and Foams in Aquatic Environments* (Guidelines). The Guidelines were developed and implemented to mitigate the impact of aerial fire retardant application on aquatic species and aquatic habitat.

In 2004, the Forest Service Employees for Environmental Ethics (FSEEE) filed a lawsuit charging the agency with failure to comply with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The Federal court for the District of Montana issued an October 24, 2005 decision stating failure to conduct an environmental analysis violated NEPA, and failure to engage in formal consultation with regulatory agencies violated ESA.

On February 27, 2008 the court ruled that the Forest Service has complied with NEPA and ESA. On April 2, 2008 the new decision was challenged by FSEEE in Missoula’s U.S. District Court.

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