



File Code: 1570

Date: October 20, 2005

Route To:

Subject: Earth Island Institute v. Ruthenbeck Ruling of October 19, 2005

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

On August 5, the Deputy Chief for National Forest System issued instructions for complying with this lawsuit. On September 23, I issued further instructions. This memorandum supersedes the instructions contained in those documents.

Yesterday, the Federal District Court for the Eastern District of California issued a clarification in Earth Island Institute v. Ruthenbeck. The court ordered that categorically excluded timber sales and the following categorically excluded activities are subject to notice, comment, and appeal under the 36 CFR 215 rules.

1. Projects involving the use of prescribed burning;
2. Projects involving the creation or maintenance of wildlife openings;
3. The designation of travel routes for off-highway vehicle (OHV) use which is not conducted through the travel management planning process as part of the forest planning process;
4. The construction of new OHV routes and facilities intended to support OHV use;
5. The upgrading, widening, or modification of OHV routes to increase either the levels or types of use by OHVs (but not projects performed for the maintenance of existing routes);
6. The issuance or reissuance of special use permits for OHV activities conducted on areas, trails, or roads that are not designated for such activities;
7. Projects in which the cutting of trees for thinning or wildlife purposes occurs over an area greater than 5 contiguous acres;
8. Gathering geophysical data using shorthole, vibroseis, or surface charge;
9. Trenching to obtain evidence of mineralization;
10. Clearing vegetation for sight paths from areas used for mineral, energy, or geophysical investigation or support facilities for such activities.

The district court expressly indicated that permits for short-term special uses, such as state-licensed outfitters and guides or gathering forest products for personal use, need not be subject to notice, comment, and appeal.

Therefore, any categorically excluded activity that does not fall within the categories the judge listed above does not require notice, comment and appeal, whether issued before or after July 7, 2005. Any actions or authorizations that were suspended under the prior instructions and that do not fall within the above categories should be immediately reinstated. In those situations where notice, comment, and/or appeal opportunity was initiated for a project under the previous



instructions, but because of the court's clarification is no longer required, the local line officer may determine if it is in the best public interest to continue to provide notice, comment, and an opportunity for appeal.

I know we still have work necessary for us to carry out our mission affected by the judge's clarifying order, including prescribed burning and fuels treatment in the wildland interface. These projects will still be subject to notice, comment and appeal and therefore necessarily be delayed. This is a challenging situation which affects our employees, partners, local communities, and individuals who use the national forests and grasslands. I appreciate and am proud of all our employees' efforts to comply with the court's order, serve the public, and take the steps necessary to implement important resource work under difficult circumstances.

Your contact in the Washington Office is Steve Segovia at 202-205-1066.

DALE N. BOSWORTH
DALE N. BOSWORTH
Chief

Enclosure