



**File Code:** 1570/1920

**Date:** April 27, 2007

**Route To:**

**Subject:** Compliance with District Court Decision in *Citizens for Better Forestry v. USDA and Defenders of Wildlife v. Johanns*

**To:** Regional Foresters

On March 30, 2007, the United States District Court for the Northern District of California issued a decision in the combined cases Citizens for Better Forestry v. USDA and Defenders of Wildlife v. Johanns. The Court held our Agency's adoption of new planning regulations at 36 CFR 219 in 2005 violated the Administrative Procedure Act (APA), National Environmental Policy Act (NEPA), and Endangered Species Act (ESA). The Court remanded the matter to us to comply with its order. Pending compliance, the Court enjoined us from implementing and utilizing the 2005 planning rule. A copy of the Court's decision is enclosed. The 2000 planning rule, including its transition provisions as clarified by the 2004 interpretive rule,<sup>1</sup> is now in effect.

We have filed a motion with the Court to alter or amend judgment. In the meantime, please be advised that the Agency must comply with the District Court's order. Forests that were completing revisions under the 1982 regulations as allowed by the transition provisions of the 2005 regulations are unaffected, except that the authority for continuing under the 1982 regulations is now found in the transition provisions of the 2000 regulations, as amended. Forests that were completing revisions under the 2005 regulations must take certain steps. At least until the Court rules on the pending motion you may not implement activities specific to the 2005 rule such as: issuing proposed plans; proposed final plans; or final plans under the 2005 planning rule or resolving objections under §219.13 of the rule.

We do want you to maintain the collaborative relationships you have built and there are many forest and grasslands planning activities and analyses that are in accordance with the National Forest Management Act and independent of the planning rule in effect. You may continue such activities including planning discussions with the public. A more extensive list of permitted activities is enclosed.

Also, while we are awaiting the Court's decision on our motion we intend to take actions that are consistent with the Court's ruling. We are planning to take additional comment on the 2005 rule, undertake additional environmental analysis, and take additional actions to address the Court's rulings regarding ESA compliance.

We appreciate your efforts to manage responsibly National Forest System lands in conformance with applicable law, regulation, and the Court's order. We will continue to coordinate with the

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<sup>1</sup> The Court's decision upheld the issuance of the 2004 interpretative rule, finding it was not subject to the notice and comment requirements of the APA.



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 Tony Erba or Ricardo Garcia, Ecosystem Management Coordination Staff, at (202) 205-0895.

*/s/ Joel D. Holtrop*

JOEL D. HOLTROP

Deputy Chief for National Forest System

cc: Station Directors  
Deputy Chiefs  
WO Staff Directors

Enclosure