

**Southwestern Region**  
**STATUS OF COURT RULING ON 2005 PLANNING RULE**  
**Talking Points /Questions and Answers- External Use**

**Background**

The United States District Court for the Northern District of California issued a decision in combined cases involving the Forest Service. The Court held that the adoption of the 2005 Planning Rule violated the Administrative Procedure Act (APA), National Environmental Policy Act (NEPA), and Endangered Species Act (ESA).

Furthermore, the Court enjoined the agency from implementing and utilizing the 2005 Planning Rule. This means the Forest Service has stopped using the 2005 Rule and is not conducting any activities specific to the rule including use of planning procedures defined in the rule.

**Status**

During this transition period the national direction from the Forest Service Washington Office (WO) is that the 2000 Planning Rule is in effect, as clarified by the 2004 Interpretative Rule.

However, transition language in the 2000 Planning Rule gives the Forest Service the authority to use the 1982 Planning Rule to amend or revise forest plans. Simply stated, while either provisions of the 2000 Planning Rule or the 1982 Planning Rule can be utilized, the southwestern region has decided to implement the 1982 Planning Rule to amend and revise forest plans during this transition period.

**2000 Planning Rule & Best Available Science**

The 2000 Planning Rule, as clarified by the 2004 Interpretative Rule specifically requires consideration of the “best available science” in implementing and amending plans.

In plain language, this means projects proposed and developed must be consistent with the current forest plan and document consideration of “best available science.” No other provisions of the 2000 Planning Rule apply to projects implementing direction from current Land Management Plans.

**Environmental Management Systems (EMS)**

Prior to the injunction on the 2005 Planning Rule, President Bush in an executive order, required all federal agencies to develop and implement an EMS.

The Forest Service in the 2005 Planning Rule required use of an EMS for each unit of the National Forest and Grasslands system as a primary management approach for addressing environmental aspects of its operations and activities. With the 2005 Planning Rule enjoined we will not be governed by the EMS language in the 2005 Planning Rule, but will instead proceed forward with EMS in accordance with the executive order.

**What’s Next?**

The agency is taking steps to address the Court’s ruling with regards to APA, NEPA and ESA. A team of Forest Service employees has been convened to develop an Environmental Impact Statement (EIS) for a new planning rule and submit the rule for comment in accordance with the Administrative Procedure Act, analyze environmental effects of a new

planning rule as required by NEPA, and consult with US Fish and Wildlife Service and National Marine Fisheries on the new rule under the Endangered Species Act.

The time-line for developing a new planning rule is eight months, with the new rule targeted to be published in the Federal Register in early 2008. General time-lines indicate the following:

- Submit Draft Rule/EIS for 60 day public comment: late summer 2007
- Submit Final Rule/EIS for Agency Clearance: end of calendar year 2007
- Publish Final Rule in the Federal Register in early 2008

Forest Service managers are encouraged to continue to engage the public in dialogues, meetings, and other public forums regarding management of the national forests and grasslands.

Since the 2005 Planning Rule has been enjoined public dialogue activities should not be structured around the development of the 2005 Planning Rule, forest plans or planning components specific to the 2005 Planning Rule.

The southwestern regional leadership team met on May 16 to discuss options about how to proceed with forest plan revisions. The Regional Office (RO) planning staff will be preparing a strategy that will allow the Region to move ahead while preserving options for implementing a new rule when it is available. The strategy should be ready for Forest, WO and RO review in June. The strategy will include a communications plan that will clarify when the strategy will be released to the public.

### **Questions and Answers based on recent interviews**

#### **Q. Why did the Forest Service prepare the 2005 Planning Rule?**

A.. After many Forests had completed development of Forest Plans under the 1982 Planning Rule, the Forest Service began a critique of the land management planning process in 1989. The published critique in 1990 identified nine principles of good planning:

1. Integrate and balance resources.
2. Communicate a clear vision.
3. Recognize limits.
4. Seek informed consent.
5. Complete within a reasonable time.
6. Orient toward people.
7. Be actively led by line officers.
8. Match analysis to questions at hand.
9. Be locally oriented and nationally balanced.

The Forest Service then began development of a new planning rule to address these principles. An Advanced Notice of Proposed Rulemaking was issued in 1991. A Committee of Scientists was formed to review the planning process and issued a report in 1999. The report focused on the need to address ecological, economic and social sustainability, collaboration with the public and take into account best available science. Two Supreme Court decisions (Ohio Forestry Association vs. Sierra Club in

1998 and the Southern Utah Wilderness Association v. Norton in 2004 helped to define the strategic nature of Forest Plans. The 2005 Planning Rule identified five major themes for the land management planning process:

- Plans should be strategic in nature.
- Plans must be adaptive and take into account current information and science.
- Land management planning must involve the public.
- Plans must guide sustainable management of NFS lands.
- Planning must comply with applicable laws, regulations and policies.

The 2005 Planning Rule is designed to focus Forest Plans on being more strategic and adaptive than previous plans. It includes concepts developed over 16 years and three different Presidential administrations.

**Q. What was the basis for the Judge's decision?**

- A. The Judge ruled that the promulgation of the 2005 Planning Rule violated the Administrative Procedures Act because a portion of the final rule was not a logical outgrowth of the 2002 draft rule. The Judge also decided the Agency did not appropriately use a categorical exclusion for the National Environmental Policy Act analysis and did not adequately consult under Endangered Species Act.

**Q. What actions did the Forest Service take in regards to the ruling?**

- A. The Agency has taken three actions. 1) On April 13 the Government filed a request for the Judge to amend or alter the judgment based on factual errors related to the ESA and NEPA decisions. There was also a request to clarify if the decision only applied to the area within the Northern District of California. 2) On April 27 the Washington Office issued a letter explaining how to comply with the Judge's decision. The memo directed that we not use the 2005 Planning Rule but encouraged continued collaboration with the public and moving plan revisions ahead as is feasible under the 2000 Planning Rule, as clarified by the 2004 Interpretative Rule. 3) On May 11 the Forest Service issued a Notice of Intent to prepare a new planning rule including development of an EIS. It is planned to have a revised rule out in early 2008.

**Q. By entering into rule making and preparing an EIS has the Agency capitulated to the Plaintiffs?**

- A. The Agency retains all of the possible legal options but wants to minimize the time of uncertainty about which rule to use in preparing plan revisions. The Agency had many planning efforts underway with some near completion and we do not wish to lose that momentum.

**Q. What will the Southwestern Region do?**

- A. The Region has held numerous public meetings on the Arizona national forests and on the Cibola grasslands. We have built momentum that we wish to maintain. The Region will be developing a strategy to keep revision efforts going while complying with the Court's ruling and other applicable laws and regulations. This strategy should be available later this summer.