

USDA Forest Service Update

September 2008



SUBJECT: 2008 Planning Rule

ISSUE: The USDA Forest Service was enjoined from using of the 2005 planning rule to implement the National Forest Management Act (NEPA) to develop, amend, or revise National Forest System land management plans.

Background: 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 the 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 the Department to comply with its order. Pending compliance, the Court enjoined the Department from implementing and utilizing the 2005 planning rule.

Remedy for the Injunction

- The Forest Service is complying with the Court's order and is working to remedy the injunction by using both APA rulemaking and NEPA environmental analysis and disclosure as a means to provide public notice and comment.
- A Notice of Intent (NOI) to prepare an Environmental Impact Statements (EIS) for a land management planning rule was published in the Federal Register (FR) on May 11, 2007.
- The proposed new planning rule was published as a proposed rule in the FR on August 23, 2007 for 60 days of public review and comment. The draft EIS for the proposed rule examines five alternatives: (A) the 2005 rule (proposed rule); (B) the 2000 rule (no action); (C) the 1982 rule; (D) the 2005 rule with no environmental management system (EMS) requirement; and (E) the 2005 rule without an EMS requirement, but with timber management requirements from the 2002 proposed rule and explicit allowance of more standards.
- The Agency completed ESA consultation with U.S. Fish and Wildlife Service and NOAA Fisheries.
- The final EIS for the 2008 planning rule was released in January 2008 and published Feb. 7, 2008. Alternative "M" was selected as the preferred alternative. The Final EIS may be viewed at the following website: http://www.fs.fed.us/emc/nfma/2008_planning_rule.html.
- The Final 2008 Planning Rule was published in the Federal Register on April 21, 2008.
- Several land management plans are currently being developed with the 2008 planning rule. Regional and Washington Office staffs are currently reviewing plans for several units, including the Cimarron Comanche NG, the National Forests in Mississippi, and the Shoshone National Forest.

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