

# USDA Forest Service Update

## March 2008



### **SUBJECT: Survey & Manage**

**SUMMARY:** The Western District Court of Washington decision in *Northwest Ecosystem Alliance v. Rey* overturned the 2004 Survey and Manage Record of Decision (ROD) and reinstated the 2001 ROD, including any amendments or modifications to the 2001 ROD that were in effect as of March 21, 2004. All management projects that met the 2001 Survey and Manage (S&M) ROD with amendments/modifications were allowed to move forward.

The Forest Service and Bureau of Land Management (BLM) released the Draft Supplement to the 2004 S&M FSEIS for 90-day public comment review in July 2006. In November 2006, the 9th Circuit Court, in a separate BLM timber sale case, ruled the 2001 Annual Species Review (ASR) red tree vole category change, and the subsequent 2003 ASR removal of red tree vole from S&M in part of its range, constituted a plan amendment that should have had NEPA analysis. In case this ruling might also be applied to other 2001, 2002, and 2003 ASR category changes and species removals, the two agencies decided to supplement the July 2006 Draft to add another alternative that maintains the species assignments of 2001 and includes 42 new species to the analysis. That Draft Supplement was released January 5, 2007 for a 90-day public comment period.

The 2007 *Final Supplement*, to remedy NEPA deficiencies identified (by the District Court) in the 2004 FSEIS and to respond to the potential implications of the Ninth Circuit Court decision on the red tree vole, was issued by the Forest Service and BLM on June 8, 2007. The Records of Decision to Remove the S&M mitigation measure were signed July 24 and 25, 2007, respectively, by Mark Rey, Under Secretary of Agriculture, and Steve Allred, Assistant Secretary of the Interior.

On August 3, 2007, a motion was filed with the Western District Court of Washington to lift the current injunction because the 2007 Survey and Manage ROD superceded both the 2001 and 2004 Survey and Manage RODs. On November 21, 2007, the Western District Court of Washington denied the agencies' motion for relief. The result of this order creates no impact to the Forest Service due to the fact that all projects were modified to be consistent with the 2001 ROD with 2001-2003 ASR modifications.

The Forest Service is moving forward cautiously in implementing the 2007 ROD. For those projects where Survey and Manage pre-disturbance surveys have been partially completed, surveys will be completed and known sites managed in accordance with Survey and Manage management recommendations so the projects are consistent with the 2001 ROD (with 2001-2003 ASR modifications). For projects, where no Survey and Manage surveys have been initiated, projects will be consistent with the 2007 ROD.

**BACKGROUND:** The Northwest Forest Plan (NWFP) included a rare species mitigation measure called Survey and Manage, which is administered jointly by the USDA Forest Service and USDI Bureau of Land Management. The S&M mitigation measure provides management guidelines for rare and little known species. It was amended in 2001 to remove common species, ease implementation, and provide the ASR process for non-NEPA species removals or management category changes. That ASR process was conducted in 2001, 2002, and 2003. In March, 2004 a ROD was issued that removed the S&M mitigation measure from the NWFP.

In August 2005, a federal district court judge in Washington held that the 2004 ROD violated the National Environmental Policy Act. In January 2006, the judge set aside the 2004 ROD and reinstated the 2001 ROD with the ASR changes. The judge further stated all projects that were in compliance with the 2001 ROD could move forward, while enjoining any logging or other ground disturbing activities not in compliance.

The 2007 Record of Decision, the 2007 Final Supplement, the July 2006 Draft Supplement, the January 2007 Supplement to it, as well as the 2004 FSEIS and all other background documents, are available at: <http://www.reo.gov/s-m2006/>.

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