



WFLC Issue Brief

Court Ruling: USFS Use of NEPA Categorical Exclusions 10/7/05

Background: On July 2, 2005, 9th Circuit District Court Judge James Singleton ruled on *Earth Island Institute v. Ruthenbeck*, a case brought by several environmental groups against a District Forester on the Sequoia National Forest in California. The Judge agreed with the plaintiffs that the use of Categorical Exclusions in National Forest system planning activities violates the Appeals Reform Act (1993) which grants citizens the right to public notice, comment and appeal. In response to the government's motion to clarify this decision, on September 16, 2005 Judge Singleton ruled that the limitations on CEs applied not only to California, but nationally and to all decisions made since July 7th.

Issues and Implications:

- All projects and activities approved with a CE after July 7th, 2005 must now be suspended. These projects must be re-issued with a notice, comment, and appeal period for a decision.
- All future projects and activities require a notice, comment and appeal period, which can take up to 135 days.
- This ruling applies to all types of projects including: hazardous fuels reduction projects, post-fire rehabilitation projects, repair of infrastructure and facilities, salvage activities, and habitat improvement work.
- Recent legislation that specifically authorizes an expanded use of CEs, including the Healthy Forest Restoration Act and the Energy Policy Act, is also subject to this ruling. All projects are now subject to the 135 day notice, comment and appeal period.
- State-by-state breakdowns of projects are attached, grouped by USFS region and organized by project type.

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