



File Code: 1570

Date: September 23, 2005

Route To:

Subject: The recent decision on Earth Island Institute v. Ruthenbeck

To: Regional Foresters, Station Directors, Area Director, IITF Director, Deputy
Chiefs, WO Staff Directors

This letter documents previous communications from the Washington Office regarding the recent decision in Earth Island Institute v. Ruthenbeck. The Federal District Court for the Eastern District of California has issued a clarifying order directing “nationwide” application of its July 2, 2005, ruling that among other things, struck down the provisions of 36 CFR Part 215 that excluded categorical exclusions from notice, comment and appeal. The District Court further clarified that its order is to be applied prospectively after July 7, 2005. The Forest Service will immediately comply with the District Court's order.

We are actively pursuing options in light of this nationwide ruling, including working with the Department of Justice to seek a stay of the ruling pending appeal. In the meantime, the **following steps must be taken immediately**, pursuant to the Court's orders of July 7, 2005, and September 16, 2005. For projects and activities implementing land and resource management plans for which the final decision was made after July 7, 2005, Line Officers will ensure that all categorically excluded proposed actions are subject to the notice, comment and appeal provisions of 36 CFR Part 215 that were not invalidated by the court. The project or activity should be suspended until this process has been completed.

Please note that the District Court's July 7, 2005 Order also invalidated other regulatory provisions: 36 C.F.R. § 215.20(b) (exempting from notice, comment, and appeal procedures decisions signed directly by the Secretary); 36 C.F.R. § 215.10(a) (permitting delegation of the determination that an emergency situation exists); and 36 C.F.R. § 215.18(b)(1) (providing that an appeal decision will be sent to appellants five days after the decision is rendered).

Additional information will be provided as it becomes available. This instruction does not apply to any hurricane related activities in Presidentially declared disaster areas or other emergency response actions. Any questions regarding this direction should be directed to Bill Supulski at 202-205-0948 or bsupulski@fs.fed.us.

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By Ann Bartuska, Acting Chief

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