

Court again halts use of logging ‘exclusions’

A California federal court judge once again has halted the Forest Service’s use of “categorical exclusions,” which allowed decisions to be made on small projects without public notice, comment or appeal.

Earlier this week, U.S. District Judge Lawrence O’Neill ruled that the use of the exclusions violates the Appeals Reform Act, which was passed by Congress in 1992 to ensure the public’s voice is heard before decisions are made.

“This Court agrees that the ARA was passed in the face of widespread opposition to the Forest Service’s 1992 proposals to eliminate appeals of project-level decisions” involving timber sales and oil and gas leases, O’Neill wrote. “Although the ARA was passed in response to the proposed changes to the appeal process that would have eliminated appeals for agency actions that previously required ‘decision documents’ prior to 1992, the Forest Service promulgated regulations that excluded these decision documents from notice, comment, and administrative appeal. These regulations were an attempt to circumvent the clear intent and purpose of Congress in passing the ARA, and were an impermissible construction of the ARA.”

The lawsuit was filed by the environmental group Sequoia Forestkeeper, which works to protect ecosystems in the Sierra Nevada mountains.

The impact of the nationwide injunction prohibiting the exclusions — commonly referred to as CEs — isn’t known at this point, according to Phil Sammon, a spokesman for the Forest Service’s Region 1 in Missoula.

“We don’t have a lot of information on the ruling itself; those things take a while for the folks in Washington to determine what the judge’s order means and tell us what to do,” Sammon said on Wednesday. “We’ll get further direction on whether to put a halt to CEs or do some type of review to see which ones had public comments and which ones didn’t.”

Kathy Bushnell, spokeswoman for the Helena National Forest, said she only knows of one project being done as a CE, which is the hazard tree removal on the MacDonald Pass cross-country ski trail.

“At this time, we will continue to do that work until we receive specific direction on how to otherwise proceed,” Bushnell said, adding that the Helena forest’s 2009 Forestwide Hazardous Tree and Fuels Reduction decision included an Environmental Assessment and public objection process. “So the ongoing hazard tree removal projects under that decision would not be impacted by this court decision regarding CEs.”

Categorical exclusions allow the U.S. Forest Service to log dead or dying trees on up to 250 acres, or cut live trees on up to 50 acres, without creating lengthy environmental analysis or

environmental impact documents. They also could be used for removing trees that pose a hazard to public safety, or to stop insect and disease infestations.

The Forest Service used the CE process from 1992 until 1999, when a federal judge ruled that the federal agency didn't base the exclusion's timber sale size limits on meaningful analysis. They were revived in 2003, suspended in 2005 and reinstated in 2007.

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