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PLANNING RULE

On December 15, 2006, the Forest Service (USFS) issued a final directive to categorically exclude development, amendment, and revision of USFS land management plans for national forests from preparation of either an environmental impact statement (EIS) or environmental assessment (EA) as required by the National Environmental Policy Act (NEPA). Many members of the environmental community and some members of Congress were outraged by this obvious violation of NEPA which would today be considered an "inappropriate" use of a "categorical exclusion" (CE) as defined by the Council on Environmental Quality (CEQ) NEPA regulations in 40 CFR Sec. 1508.4. (See CEQ final guidance on "Establishing, Applying, and Revision Categorical Exclusions Under the National Environmental Policy Act," 75 Fed. Reg. 75628, December 6, 2010.) Under the CEQ regulations and the guidance, any plan for a national forest would be considered an "extraordinary circumstance" in which a normally categorically excluded federal action would have significant environmental effects. The same would be true for many plan amendments.

The February 14 proposed rulemaking on National Forest system land management planning (76 Fed. Reg. 8480) proposes to correct this type of CE irresponsibility in the proposed rule which is somewhat hidden at 76 Fed. Reg. 8511 in a two-paragraph discussion. While the proposed rule requires preparation of an EIS for plan development and revisions, it still allows a CE for plan amendments "depending upon the scope and scale of the amendment and its likely effects." This provides a convenient loophole for USFS officials and an opportunity to determine that the scope and scale of almost any amendment does not require preparation of an EA or an EIS.

While the proposed rule is commendable in many respects and would expand the NEPA analysis by addressing new and emerging environmental issues, the discussion of how the Forest Service land management planning would comply with NEPA and improve on the existing NEPA process should be greatly expanded in the final rule. This would include revisiting the CE land planning directive of December 15, 2006 discussed above. Also, the final rule should provide guidance on under what circumstances the "scope and scale" of a plan amendment would require preparation of an EIS or an EA.

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