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LOCAL GROUPS FILE LAWSUIT TO INCREASE PUBLIC PARTICIPATION IN NATIONAL FOREST DECISIONS

U.S. Forest Service Regulations Deny the Public's Right to Submit Comments and File Appeals on Many Decisions Affecting Public Lands Nationwide

Santa Barbara, Calif. – In a federal lawsuit filed today, two local conservation organizations are seeking to restore the public's right to participate in land use decisions on National Forests. The case, filed in U.S. District Court in Los Angeles, challenges regulations that eliminate the public's longstanding right to review, comment on, and file administrative appeals of many projects and activities on our nation's public forest lands.

"Our national forests are owned by all citizens to enjoy for outdoor recreation, clean air and water, open space, and wildlife habitat," said Jeff Kuyper, executive director of Los Padres ForestWatch, a nonprofit conservation organization based in Santa Barbara that works to protect the Los Padres National Forest in Monterey, San Luis Obispo, Santa Barbara, and Ventura counties. "Today's lawsuit seeks to restore the public's voice in the management of our nation's public lands."

The lawsuit challenges a set of nationwide regulations that were applied to a project that the U.S. Forest Service approved earlier this year in the Los Padres National Forest. The Tepusquet Fuels Treatment Project includes clearing vegetation across 19,300 acres using chainsaws, dozers, masticators, and prescribed burning. The Forest Service approved the project on August 10, 2009 without preparing an Environmental Assessment, and further exempted the project from public notice, comment and appeal, citing to the challenged regulations.

Because the Forest Service excluded this project from the usual requirement to prepare an Environmental Assessment ("EA"), the agency did not give the public an opportunity to review and comment on the details of the project, or to appeal it to higher-level forest officials.

Instead, the Forest Service only provided the public with a two-page description back in 2006, disclosing very few details about the project and its possible impacts.

The conservation groups support appropriate fuels treatment projects, and believe that portions of the Tepusquet project are appropriate. However, they disagree with certain aspects of the project that are far removed from the wildland-urban interface and which extend several miles into the remote Los Padres National Forest backcountry. Plaintiffs' specific concerns include the construction of several miles of remote fuel breaks using heavy machinery, excessive vegetation clearance along forest roads, and the cumulative impacts associated with this project when combined with another pre-existing prescribed burn project and two recent wildfires that collectively burned more than 330,000 acres of healthy native chaparral adjacent to, and in the vicinity of, the Tepusquet project.

"It is critical that citizens be allowed the opportunity to review and comment on projects that impact our public lands," said Richard Halsey, executive director of the California Chaparral Institute, a nonprofit organization based in San Diego County comprised of scientists, wildland firefighters, and educators working together to promote the understanding of southern California's chaparral ecosystems. "We have lost so much native shrubland habitat in the region already due to human-caused wildfires. We'd like to help the Forest Service develop plans to protect what is left, but that's difficult to do when we're shut out of the process."

If members of the public had been permitted to comment on the project, and to administratively appeal it, plaintiffs could have convinced the Forest Service to prepare an EA or more-detailed Environmental Impact Statement, which along with plaintiffs' substantive comments could have convinced the Forest Service to change the proposed project to eliminate its inappropriate components.

The groups are asking the court to set aside the challenged regulations and the Decision Memo for the Tepusquet Fuels Treatment Project. The groups are also asking the court to tailor its ruling to allow necessary and proper fire mitigation directly along the wild-urban interface to proceed while the Project is subjected to public notice, comment and appeal.

The case is *Los Padres ForestWatch et al. v. U.S. Forest Service*. The plaintiffs are Los Padres ForestWatch and the California Chaparral Institute. For a copy of the complaint or for more information, visit their websites at www.LPFW.org and www.californiachaparral.org. The groups are represented by attorneys Matt Kenna, and Doug Carstens of the law firm Chatten-Brown and Carstens.

Background Information

Before 1992, the U.S. Forest Service allowed the public to review, comment on, and appeal development activities such as timber sales, fuel treatments, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, mining and oil drilling.

In 1992, the Forest Service proposed eliminating the public's longstanding right to participate in these projects. The proposal was widely opposed, and Congress responded by enacting the Forest Service Decisionmaking and Appeals Reform Act ("ARA"). The ARA requires that all "proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans" must be subject to public notice, comment, and appeal.

The Forest Service in 2003 established new regulations that exempted several types of projects from the usual requirement to prepare an Environmental Assessment, and also exempted those projects from public comment and appeal under the ARA. The exempted actions included timber sales up to 250 acres, forest-thinning up to 1,000 acres, and prescribed burns up to 4,500 acres. The Forest Service thus began carrying out many forest projects without affording comment and appeal rights to the public.

The ARA regulations were successfully challenged in federal court in 2003, and the Ninth Circuit Court of Appeals later upheld the district court's judgment that the rules violated the ARA. However, on March 3, 2009, the United States Supreme Court reversed the Ninth Circuit on a technicality, allowing the regulations to spring back to life. The Forest Service is now relying on this regulation to approve a wide variety of projects on National Forest land.

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