

C. Evaluation of New Information

1. Emerging Issues

Below is information about lawsuits affecting the NFGT. Action has been taken to address and/or adhere to final rulings that have been issued, and lessons learned while continuing litigation support efforts are taken into consideration when planning new projects for implementation of *Plan* objectives.

(1) NFGT Litigation

Sierra Club, et al v. Jacobs, et al in the U.S. District Court, Southern District of Texas, Houston Division

In a lawsuit filed in 2004, Plaintiffs cited four complaints alleging the Forest Service violated the APA (Administrative Procedures Act) in Count 1, the NFMA (National Forest Management Act) in Count 2, NFMA again and Forest Plan requirements in Count 3, and the NEPA (National Environmental Policy Act) in Count 4. The lawsuit enjoined two decisions to improve forest health conditions by commercial thinning on portions of the Sam Houston NF.

In 2005, Plaintiffs prevailed in a ruling issued by the District Court regarding Counts 3 and 4. After an evidentiary trial in December 2006, the court ruled in favor of the government by dismissing Plaintiffs' claims on Counts 1 and 2.

Both parties appealed the District Court's rulings to the Fifth Circuit Court of Appeal and the matter was scheduled for non-binding mediation. Both projects named in the suit remain enjoined while proceedings continue.

Audie Apple v. USA in the U.S. District Court, Eastern District of Texas, Sherman Division

Plaintiff Audie Apple filed a lawsuit claiming possession of an approximate 24-acre tract (called Tract 18) of land located on the Caddo Grasslands Unit in Fannin County, Texas during January 2006. His petition included claims for damages such as for the death of a registered longhorn bull and the cutting of cedar trees when a new fence was built by the government around Tract 18.

The government responded that it has clear title to the land in question and that the damages claimed by Mr. Apple are not valid. In February 2007, the case was referred to non-binding mediation. Although a settlement conference was attended by all parties, by the end of the fiscal year motions were filed by both parties to reinstate the case to the trial docket.

(2) National Forest System Litigation Affecting the NFGT

Roadless Area Management

On November 29, 2006, the U.S. District Court for the Northern District of California issued a clarifying order to its September 20, 2006 decision in the consolidated cases

California v. USDA and Wilderness Society v. USFS. The September decision enjoined the 2005 State Petitions Rule and reinstated the 2001 Roadless Rule (including the Tongass Amendment). On September 22, 2006, a letter was issued from the Forest Service office in Washington that informed all units that all projects in inventoried roadless areas referred to by the 2001 Roadless Area Conservation Rule (with exception of the Tongass NF) must immediately comply with the court's order. The court's November order clarified the scope of the injunction.

The Washington direction included language from the court's order which stated:
“[The Forest Service] is enjoined from taking any further action contrary to the Roadless Rule without first remedying the legal violations identified in the Court's opinion of September 20, 2006. Such further actions by the Forest Service include, but are not limited to, approving or authorizing any management activities in inventoried roadless areas that would be prohibited by the 2001 Roadless Rule (including the Tongass Amendment), and issuing or awarding leases or contracts for projects in inventoried areas that would be prohibited by the 2001 Roadless Rule, including the Tongass Amendment. The effective date of this injunction is September 20, 2006.

The 2001 Rule established prohibitions to road construction/reconstruction and timber harvest in areas identified in the 2000 Roadless Area Conservation FEIS, Volume 2. There were certain exceptions. The entire 2001 Rule and preamble are found in the Federal Register on January 12, 2001 (66 FR 3244).

Hazardous Fuels Reduction Categorical Exclusion

On December 5, 2007, the U.S. Ninth Circuit Court of Appeals declared the hazardous fuels reduction categorical exclusion (HFRCE) developed under the President's Healthy Forests Initiative invalid. It also indicated that the U.S. Eastern District of California Court should issue an injunction against further use of the HFRCE and determine which activities approved after October 8, 2004, under the HFRCE should be enjoined.

The Circuit's ruling does not extend to other categorical exclusions.

While the Court's order did not immediately enjoin use of the HFRCE, the Forest Service has refrained from issuing new decisions and refrained from advertising or awarding contracts to implement decisions made after October 8, 2004 that were approved under the HFRCE.

Wilderness Society v. Rey

The NFGT is continuing compliance with the April 2006 court order from the U.S. District Court in Montana that enjoined the agency from enforcing 36 CFR 215.13(a) [which provides, among other things, that only those who submit substantive comment on a Forest Service project will be eligible to appeal the project decision] and puts back into effect the previous regulation at 36 CFR 215.11(a).

Earth Island Institute v. Ruthenbeck

During 2005, the Federal District Court for the Eastern District of California ordered that ten categories of categorically excluded timber sales are subject to notice, comment and appeal under 36 CFR 215 rules. The NFGT ensures it is abiding by this court's ruling.

2. Changes in National or Regional Policy/Direction

Four basic levels of planning guide the overall management of national forests and grasslands:

1. *Strategic planning* which takes place at the highest level and identifies strategic priorities for the agency that are implemented over a period of time through annual agency budgets. The strategic priorities are based on national assessments of natural resources and are responsive to social and political trends.
2. *Business planning* by national programs, regions, research stations, and the northeastern area which translates broad strategic direction into regionally specific work that contributes to the agency's mission.
3. *Unit planning* (i.e. the NFGT Revised Forest Plan) which provides an inventory of resources and their present conditions on a particular management unit. This inventory, coupled with the desired future condition for the resources, is the basis for annual work planning and budgeting.
4. *Annual work planning* which identifies the projects that units propose for funding within a fiscal year. This level of planning involves the final application of strategic direction into a unit's annual budget to move its resources toward its desired future condition.

Over the course of Plan Revision development and implementation, there have been numerous changes in national and regional policy and direction.

The Government Performance and Results Act (1993), was enacted to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction, still significantly influences the management of national forests.

Administrative procedures and processes governing preparation of projects to reduce hazardous fuels and restore healthy ecological conditions on Federal land have also undergone changes. In 2002, the *Healthy Forests Initiative (HFI)* was established to reduce administrative process delays to the implementation of projects. The *Healthy Forests Restoration Act (HFRA)* was passed in December 2003 and was primarily intended to provide improved statutory processes for hazardous fuel reduction projects on certain types of at-risk National Forest and Bureau of Land Management lands.

In April 2003, former FS Chief Dale Bosworth described his concept of the *Four Threats to the Health of the Nation's Forests and Grasslands*. The *USDA Forest Service Strategic Plan for Fiscal Years 2004-2008* provided a new framework for accomplishing the agency's mission and incorporated actions to resolve the Four Threats. Forest Service leadership, through the implementation of the Strategic Plan, became committed to removing the Four Threats from the national landscape.

Actions described to address the Four Threats included:

Fire and fuels—Restore healthy, disturbance-resilient ecosystems on lands at risk from catastrophic fire, improving the condition and function of critically important watersheds, and sustaining critical wildlife habitat nationwide.

Invasive species—Protect forest and rangeland ecosystems by preventing the release of non-native species and by controlling the spread, or eradicating, invasive species.

Loss of open space—Conserve the nation's forests and rangelands most at risk due to subdivision and land conversion by working with partners, communities and landowners to balance development with sustaining ecosystem services and viable working landscapes.

Unmanaged recreation—Work with partners to develop travel management plans that regulate the use of off-highway vehicles on designated roads, trails, and parks in an appropriate manner.

Forest Service Chief Abigail R. Kimbell re-enforced the national commitment to reducing the Four Treats in the USDA Forest Service Strategic Plan FY2007–2012 issued in July 2007. The national strategic goals and objectives for fiscal years 2007–2012 are:

1. Restore, sustain, and enhance the Nation's forests and grasslands.
2. Provide and sustain benefits to the American People.
3. Conserve Open Space.
4. Sustain and Enhance Outdoor Recreation Opportunities.
5. Maintain Basic Management Capabilities of the Forest Service.
6. Engage Urban America with Forest Service Programs.
7. Provide Science-Based Applications and Tools for Sustainable Natural Resources Management.

Prior to the injunction on the 2005 planning rule, executive order E.O.13423 required all federal agencies to develop and implement an Environmental Management System (EMS). The Forest Service, in the 2005 Planning Rule, required use of an EMS for each unit of the National Forest and Grasslands system as a primary management approach for addressing environmental aspects of its operations and activities. In accordance with the E.O.13423, the Forest Service continues development of an EMS.

The issuance of the 2005 National Travel Management Rule has had a significant impact on the management of the Forest. The local decision prohibiting cross-country and designating which roads and trails will be open to public motor vehicle use will be issued in 2008.

Regional changes to policy or direction resulted from the issuance of the 2003 revision of the U.S. Fish and Wildlife Service's Red-cockaded Woodpecker Recovery Plan. This resulted in Forest Plan Amendment #7 in April 2006.

3. Annual Budgets for FY 2003 to FY2007

Table 37 shows the annual fluctuation in budgets by Budget Line Item from 2003-2007.

Table 37. EXPENDITURES FOR FY2003-FY2007

PROGRAM	DESCRIPTION	2007	2006	2005	2004	2003
C MDF	CONSTRUCTION SUPPLEMENTAL DISASTER FUND	889,117	1,797,036			
CMEX	CONSTRUCTION EXTERNAL REIMBURSABLE	124,498				
CMFC	FACILITIES CAPITAL IMPROVEMENTS & MAINTENANCE	914,421	398,334	963,070	2,669,722	1,022,007
CMII	CONSTRUCTION INFRASTRUCTURE AND IMPROVEMENT		254,987	9,077	372,276	67,355
CMRD	ROADS CAPITAL IMPROVEMENTS & MAINTENANCE	782,692	1,261,425	1,839,364	1,500,571	1,150,532
CMTL	TRAILS CAPITAL IMPROVEMENTS & MAINTENANCE	310,437	269,890	273,150	129,832	143,890
CP09	FACILITIES ASSESSMENT	160,686	165,322			
CWF2	CO-OPERATIVE WORK NON-AGREEMENT BASED	331,644				
CWFS	COOPERATIVE WORK, OTHER	316,081	374,972	278,784	533,623	499,438
CWKV	COOPERATIVE WORK, KNUTSEN-VANDENBERG FUND	1,806,395	683,978	1,472,432	2,194,018	1,320,480
CWK2	KV REGIONAL PROJECT	1,966,003	1,888,685			
EXEX	LAND EXCHANGE	149,575	33,000	150,780	224,535	0
EXSC	CONVEYANCE OF ADMIN SITES	26,829	14,902			
FDCL	FEE DEMO COLLECTION SUPPORT	58,704	50,357	46,453	37,771	22,876
FD DS	FEE DEMO SITE SPECIFIC	315,309	232,065	306,933	234,758	227,608
FEFR	RECREATION FEE COLLECTION				300	794
GBGB	GIFTS AND BEQUESTS					1,381
HTAE	FEDERAL HIGHWAY ADMIN EXPENSE		9,124	4,962	10,997	11,000
HTAP	FEDERAL HIGHWAY AQUATIC PASSAGE	6,628	184,111			
HTRP	FEDERAL HIGHWAY PUBLIC ROADS					14,816
LALW	LAND ACQUISITION MANAGEMENT/LAND PURCHASE	3,262	13,873	17,681	5,157	39,441
MSEQ	ADMINISTRATIVE MAPS		462			

Table 37. EXPENDITURES FOR FY2003-FY2007 (cont').

MVIS	MAPS FOR VISITORS & OTHER REC	28,043	16,444	12,991	2,510	10,108
NFCC	VEG TREATMENTS TO IMPROVE CONDITIONS					106,935
NFDD	SUPPLEMENTAL DISASTER FUND	4,239	6,914,714			
NFEE	EMERGENCY SUPPLEMENTAL		42,617	6,625		
NFEX	NATIONAL FOREST SYSTEM EXTERNAL REIMBURSABLE				136,554	56,180
NFIM	INVENTORY AND MONITORING	362,948	330,096	387,447	325,052	595,038
NFLM	LANDOWNERSHIP MANAGEMENT	308,847	217,833	234,686	314,228	367,235
NFMG	MINERALS & GEOLOGY MANAGEMENT	499,350	590,959	364,430	428,723	333,932
NFN3	REHABILITATION AND RESTORATION			6,725		
NFPN	LAND MANAGEMENT PLANNING	97,448	37,730	98,761	27,595	110,752
NFRG	GRAZING MANAGEMENT	88,392	114,432	102,213	220,362	162,166
NFRW	RECREATION, HERITAGE, WILDERNESS	1,042,300	1,157,467	1,066,495	718,520	873,602
NFSA	SCSEP			389,378		404,772
NFSD	SCSEP	35,171	479,211			104,954
NFTM	TIMBER SALES MANAGEMENT	1,008,585	2,135,213	1,712,691	1,417,523	1,544,452
NFVW	VEGETATION AND WATERSHED MANAGEMENT	215,042	390,309	317,107	521,477	439,610
NFWF	WILDLIFE AND FISHERIES HABITAT MANAGEMENT	620,237	683,205	630,118	590,806	775,441
NFXF	NFS FEDERAL EXTERNAL REIMBURSABLE	200,000		432		
NFXN	NFS NON-FEDERAL EXTERNAL REIMBURSABLE			28,995		
PSCP	PAYMENTS TO STATES- COUNTY PROJECTS		82,125	4,070		
PSRS	TITLE II FUNDING	243,147	675,403	3,236		
QMQM	OPERATIONS & MAINTENANCE OF QUARTERS	19,817	77		1,777	2,093
RIRI	RESTORATION OF FOREST LANDS				0	1,255
RTRT	REFORESTATION TRUST FUNDS	131,829	41,752	87,019	131,085	219,143
SPEA	ECONOMIC ACTION PROGRAM			3,289	1,000	8,673
SPFH	FOREST HEALTH	347,327	306,205	352,826	409,991	
SPIA	FOREST RESOURCES INFORMATION & ANALYSIS				425,000	
SPS4	FEDERAL LANDS, TITLE IV					16,908
SSSS	TIMBER SALVAGE SALES	311,682	704,922	167,660	14,031	9,104
TPCD	RECREATION BACKLOG/TIMBER PIPELINE	90,317	61,449	59,000		
TPPS	TIMBER SALES/TIMBER PIPELINE	16,384	25,704	408,885	141,685	267,534
TRTR	ROADS AND TRAILS FOR STATES	244,600	200,793	86,658	344,061	75,605

Table 37. EXPENDITURES FOR FY2003-FY2007 (cont').

WCCS	COMPUTER SERVICE					235,401
WCFE	FLEET EQUIPMENT					986,489
WFHF	HAZARDOUS FUELS REDUCTION	2,502,841	1,829,584	1,829,583	2,614,817	851,771
WFPR	WILDLAND FIRE, PREPAREDNESS	1,677,268	1,446,582	1,405,030	1,384,545	884,180
WFSU	FIRE OPERATIONS	119,985		9,561,826		114,855
WFXN	WF NONFED EXTERNAL REIMBURSABLE	869		31,011		
TOTAL		18,378,949	26,117,349	24,721,873	18,084,902	14,079,809

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