



Questions and Answers About Our Lawsuit Challenging the Forest Service Appeal Reform Act Regulations

1. What is the lawsuit about?

The lawsuit challenges a set of U.S. Forest Service regulations that apply to all 155 national forests across the country. The regulations severely limit the public's right to receive notice, submit comments, and file appeals on many activities on national forests, including oil development, logging, road construction, and vegetation removal. These activities can have a significant impact on the environment, but the regulations allow the Forest Service to approve them behind closed doors, with little or no public involvement.

2. What laws are being violated?

Our lawsuit alleges that the Forest Service's practice of excluding the public violates the Forest Service Decision Making and Appeals Reform Act (commonly called "ARA"). The U.S. Congress passed ARA in 1992 after the U.S. Forest Service proposed to eliminate most administrative appeals of project decisions.

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. However, following passage of the ARA, the U.S. Forest Service established new regulations that exempted many types of projects from public comment and appeal. A federal district court and the Ninth Circuit U.S. Court of Appeals have both invalidated these regulations, but the U.S. Forest Service is still relying on them, in direct violation of the Appeals Reform Act.

3. What do you hope to achieve with this lawsuit?

Our lawsuit asks a federal district court to declare that the Forest Service regulations violate the Appeals Reform Act, and to set those regulations aside. If the regulations are invalidated, the U.S. Forest Service would no longer be able to rely on them, restoring the public's longstanding right to receive notice, submit comments, file appeals, and otherwise participate in the decision making process.

4. What is the Tepusquet Project?

The U.S. Forest Service approved the Tepusquet Fuels Treatment Project in August 2009. The project includes clearing vegetation across 19,300 acres using chainsaws, dozers, masticators, and prescribed burning. The project is located primarily in the Los Padres National Forest in Santa Barbara County, between Tepusquet Canyon Road and the San Rafael Wilderness.

5. Why is the Tepusquet Project mentioned in this lawsuit?

In approving the Tepusquet Project, the U.S. Forest Service relied on the unlawful regulations and did not provide the public with the usual notice, comment, and appeal procedures that it typically does for projects of this magnitude. The lawsuit cites the Tepusquet Project as an example of one of the many projects where the public no longer has opportunities to meaningfully participate in the decision.

6. Didn't the Forest Service already provide opportunities for public comment on the Tepusquet Project?

Forest officials publicly announced the Tepusquet project in January 2005. In March 2006 – fifteen months later – the U.S. Forest Service provided the public with a two-page description of the “Proposed Action” and a map of the project area. That project description did not discuss any of the potential environmental impacts associated with the project. The Forest Service accepted public comments for thirty days and scheduled one open house during that time.

As the Forest Service finalized its proposal over the next three years, it did not provide any additional opportunities for public comment. Nor did the Forest Service provide the public with any additional details of the project, or any evaluation of its environmental impacts. The Forest Service also did not allow the public to appeal the project to the Forest Supervisor for reconsideration. Typically, for projects of this size, the Forest Service would prepare an Environmental Assessment, make that assessment available for public review and a thirty-day comment period, and then allow for further review through the appeals process. None of these procedures were followed.

7. What difference would it make if the Forest Service provided more details about the project, or allowed an appeal?

If members of the public had been permitted to comment on the project details and environmental impacts, and to administratively appeal it, the public could have convinced the Forest Service to prepare an environmental assessment. Such public comments and environmental documents could have convinced the Forest Service to change the proposed project to eliminate its inappropriate components.

8. Wouldn't public comments, environmental studies, and appeals needlessly delay this project?

No. During the four-and-a-half years that the Forest Service evaluated this project, it could have easily prepared an Environmental Assessment and made it available to the public for a 30-day comment period. If the public was afforded an opportunity to appeal the project, that appeals process would conclude within ninety days after project approval. Forest officials could easily have incorporated these opportunities into their four-and-a-half year planning process.

It should also be noted that the Forest Service has emergency authority to immediately proceed with projects when “implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety” while appeals are pending, so this suit would never create a situation where an urgent project is held up pending public comment and appeal. *See* 36 C.F.R. §§ 215.10, 215.2.

9. What concerns would you have addressed if you were provided an opportunity to comment and appeal?

We support appropriate fuels treatment projects, and believe that portions of the Tepusquet project are appropriate. However, we 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.

Our specific concerns include the construction of several miles of remote fuel breaks using heavy machinery, excessive vegetation clearance, and the impacts of this project when combined with an adjacent prescribed burn project and two recent wildfires that collectively burned more than 330,000 acres of healthy native chaparral in the area. We want to ensure that some healthy native chaparral remains so that wildlife still has a place to live, and for people to recreate in and enjoy. In addition, burning additional areas will add to the excessive sediment loads that are expected in this watershed following the 90,000-acre La Brea Fire that burned this summer.

10. Does your lawsuit seek to stop the Tepusquet project? Wouldn't that threaten homes?

Our lawsuit asks the judge to set aside the Decision Memo for the Tepusquet project while the Forest Service provides for public notice, comment, and appeal opportunities. *We are also asking the court to tailor its ruling to allow necessary and proper fire mitigation directly along the wildland-urban interface to proceed while the project undergoes public review.* This will ensure that all necessary and proper fire mitigation can proceed within a 1.5-mile radius of the scattered ranches and homes that the Forest Service classifies as a “Community at Risk.”

Specifically, our lawsuit asks the court to “Set aside the challenged regulations and the Decision Memo for the Tepusquet Fuels Treatment Project, with any injunctive relief tailored to permit necessary and proper wildland-urban interface fire mitigation to go forward while the Project is subjected to public notice, comment and appeal.”

*For more information, please contact:
Jeff Kuyper, LPFW (805) 617-4610 Richard Halsey, CCI (760) 822-0029*