

INFRASTRUCTURE INVESTMENT AND JOBS ACT



IIJA—Restoration Projects on Federal/Non-Federal Land: Project Selection

08801-0003-41—March 2024

The Infrastructure Investment and Jobs Act (IIJA) was signed into law on November 15, 2021. This legislation provided funding to “rebuild America’s roads, bridges and rails, expand access to clean drinking water, ensure every American has access to high-speed internet, tackle the climate crisis, advance environmental justice,¹ and invest in communities that have too often been left behind.” It provided the Forest Service (FS) approximately \$5.5 billion for reducing the risk of wildland fire, restoring ecosystems, and investing in natural resources related to infrastructure. Of this funding, \$100 million was made available specifically “to restore native vegetation and mitigate environmental hazards on mined land on Federal and non-Federal land” through provision 40804(b)(8).^{2, 3} As part of the Office of Inspector General’s oversight responsibility, we are issuing this informational report to provide general program information and highlight FS’ project selection and prioritization process for this specific provision.

According to FS’ IIJA Program guidance,⁴ IIJA projects must be aligned with at least one of FS’ strategic goals; see Figure 1 below.

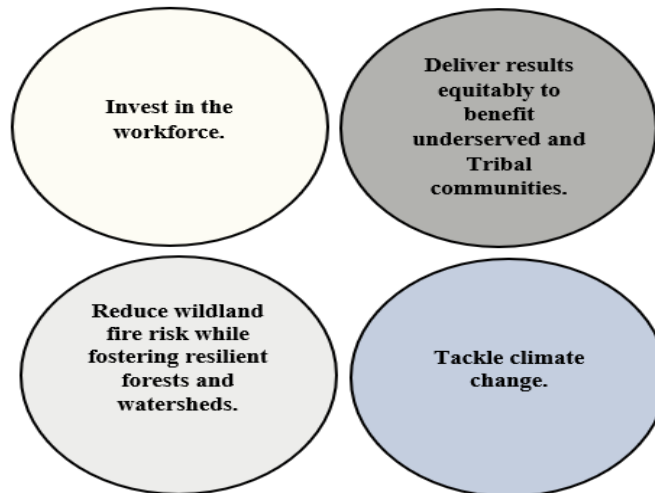


Figure 1. FS’ Four Strategic Goals.

¹ *Environmental Justice* is the just treatment and meaningful involvement of all people in government decisions and funded activities that impact human health and the environment.

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40804(b)(8), 135 Stat. 1106 (2021).

³ Of the \$100 million, FS is planning to allocate \$20 million per year from fiscal year (FY) 2022 through FY 2026.

⁴ FY 2022 Bipartisan Infrastructure Legislation Program Direction Contents, June 28, 2022.

Additionally, according to FS' IJA Program guidance, when prioritizing projects, FS units should look for opportunities to integrate IJA projects with other programs and to align them with the intent of the Justice40 Initiative, which states that 40 percent of the overall benefits from certain Federal investments should flow to disadvantaged communities.^{5, 6} As described in an internal FS IJA program briefing paper, FS considered environmental justice, equity, and climate resilience in the IJA project selection process for projects funded by provision 40804(b)(8) with a preference for projects in counties of persistent poverty.⁷ Specifically, FS should look for projects which would spur economic opportunity for disadvantaged, underinvested, and marginalized communities, or would include working with partners to leverage funding and expertise, and to expand the scope of work.

For fiscal years (FYs) 2022 and 2023, FS designated IJA funds awarded through provision 40804(b)(8) for three project-specific program areas to: (1) mitigate environmental hazards on Federal lands, (2) restore vegetation on non-Federal lands, and (3) restore vegetation on Federal lands. Figure 2 below illustrates provision 40804(b)(8) project-specific program area funding amounts for FYs 2022 and 2023.

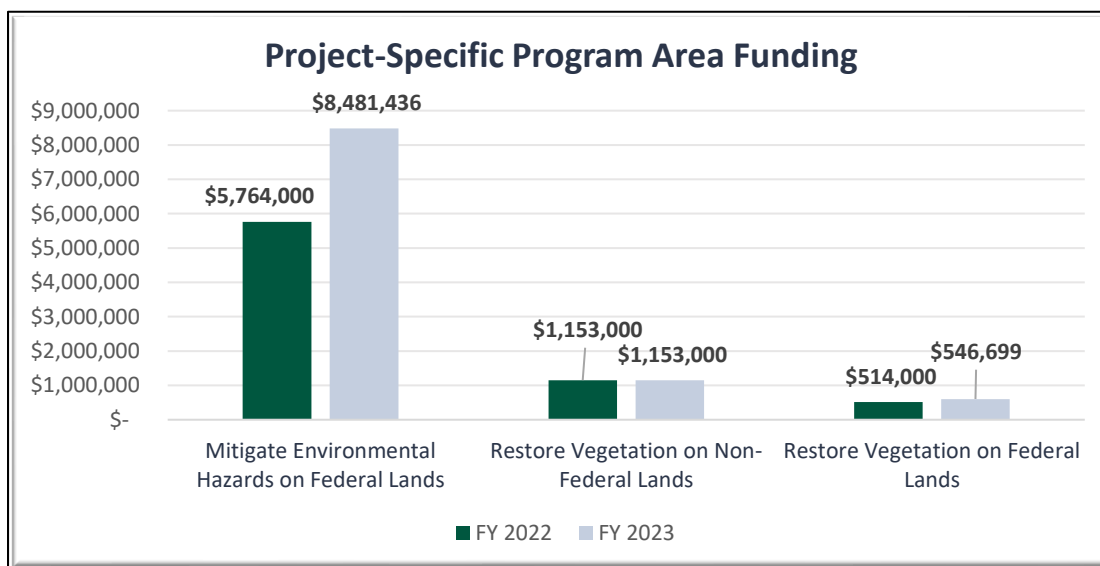


Figure 2. Provision 40804(b)(8) Project-Specific Program Area Funding Amounts for FYs 2022 and 2023.

⁵ Executive Order (E.O.) 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg., 7619 (Feb. 1, 2021), established the Justice40 Initiative and a goal of having 40 percent of the overall benefits from certain Federal investments flow to disadvantaged communities. On July 20, 2021, the Office of Management and Budget issued *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28, which provided the initial recommendations pursuant to section 223 of E.O. 14008.

⁶ These investments can benefit disadvantaged communities across one or more of the following seven areas: climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure.

⁷ NRE/Forest Service Briefing Paper, May 12, 2022.

Mitigate Environmental Hazards on Federal Lands

FS' Abandoned Mine Lands Program seeks to minimize the human health and safety hazards at abandoned mines while preserving the historic and wildlife habitat resources that the mines provide. Examples of the types of mitigation and restoration activities include:

- Construction projects to address contaminated sites;
- Water resource monitoring and treatment activities; and
- Trash removal.

Figure 3 below is a photo of a mines remediation project on a national forest.



Figure 3. Mines Remediation Project on a National Forest. USDA Forest Service Photo by Ernesto Maldonado.

FS uses a national prioritization process for selecting these projects. To ensure long-term program and project stability and to minimize agency liabilities and risks, FS prioritized using IJA provision 40804(b)(8) funding for existing national priority projects over new projects.

FS defines national priority projects as:

- Sites with existing compliance issues that would subject FS to penalties and/or legal action;
- FS oversight of a potentially responsible party⁸ site investigation on FS lands, where such oversight is mandated through an enforceable agreement; and
- Verified ongoing projects.

For both new and national priority projects, FS regions worked in conjunction with the Washington office⁹ to prepare project proposal forms that used a scoring system to rank projects based on specific criteria. Figure 4 below shows the ranking factors and scoring used in the project proposal form.

| Ranking Factor | | Potential Points |
|--|-----------------------------------|-------------------------|
| I. | Human Health Threat/Risk | 40 |
| II. | Ecological Threat/Risk | 25 |
| III. | Enforcement/Legal Risk | 20 |
| IV. | Partnerships/Supplemental Funding | 9 |
| V. | Environmental Justice | 5 |
| VI. | Climate Risk and Resiliency | 1 |
| Total Potential Points Available: | | 100 |

Figure 4. Project Proposal Form Ranking Factors.

According to FS guidance,¹⁰ project proposals are ranked and scored solely based on the information provided in the proposal form and must include relevant information to support the scoring and ranking as indicated on the form. The information on the project proposal form is verified nationally before funds are allocated.

In conjunction with FS’ ranking and scoring process, FS used a screening tool to check whether the selected projects met the intent of the Justice40 Initiative.¹¹ The White House Council on Environmental Quality released a tool, known as the Climate and Economic Justice Screening Tool (CEJST), to help identify disadvantaged communities and ensure that 40 percent of the overall benefits of Federal climate, clean energy, and other key programs are reaching disadvantaged communities.

For FYs 2022 and 2023, FS allocated more than \$14.2 million of IJA funding for provision 40804(b)(8) for mitigation of environmental hazards on Federal lands (see Figure 5 below). This included 10 ecosystem restoration projects in FY 2022 and 20 ecosystem restoration projects in FY 2023. According to FS, these projects were ongoing and were previously vetted and funded through FS’ regular appropriations process. They are slated to be completed through existing contracts or agreements with parties that FS determined have the technical expertise and specialized training to conduct

⁸ A potentially responsible party (PRP) is any individual or company potentially responsible for or contributing to a spill or other contamination at the site. Whenever possible, through administrative and legal actions, EPA requires PRPs to clean up hazardous sites they have contaminated.

⁹ FS is divided into four organizational levels: Headquarters, Regions, National Forests and Grasslands, and Ranger Districts. Headquarters is commonly referred to as the Washington office.

¹⁰ Environmental Compliance and Protection Program Environmental Restoration Project Ranking and Scoring Process, FYs 2024–2026.

¹¹ The Justice40 Initiative states that 40 percent of the overall benefits from certain Federal investments should flow to disadvantaged communities. See footnotes 4 and 5 for more information.

environmental cleanups. Figure 5 below shows the location and allocated funding amounts for the approved ecosystem restoration projects for FYs 2022 and 2023.

| FS Location | Number of Approved Projects | Allocated Amount |
|--|-----------------------------|---------------------|
| Region 1: Northern Region (R1) | 4 | \$3,800,000 |
| Region 2: Rocky Mountain Region (R2) | 6 | \$3,140,000 |
| Region 3: Southwestern Region (R3) | 5 | \$1,214,000 |
| Region 4: Intermountain Region (R4) | 2 | \$131,276 |
| Region 5: Pacific Southwest Region (R5) | 3 | \$3,400,000 |
| Region 6: Pacific Northwest Region (R6) | 1 | \$500,000 |
| Region 8: Southern Region (R8) | 4 | \$1,800,000 |
| Region 9: Eastern Region (R9) | 2 | \$83,160 |
| Region 10: Alaska (R10) | 2 | \$150,000 |
| Washington Office: District of Columbia (DC) | 1 | \$27,000 |
| Total | 30 | \$14,245,436 |

Figure 5. FYs 2022 and 2023 Approved Ecosystem Restoration Projects to Mitigate Environmental Hazards on Federal Lands.

Figure 6 below shows a map depicting the FS regional locations.

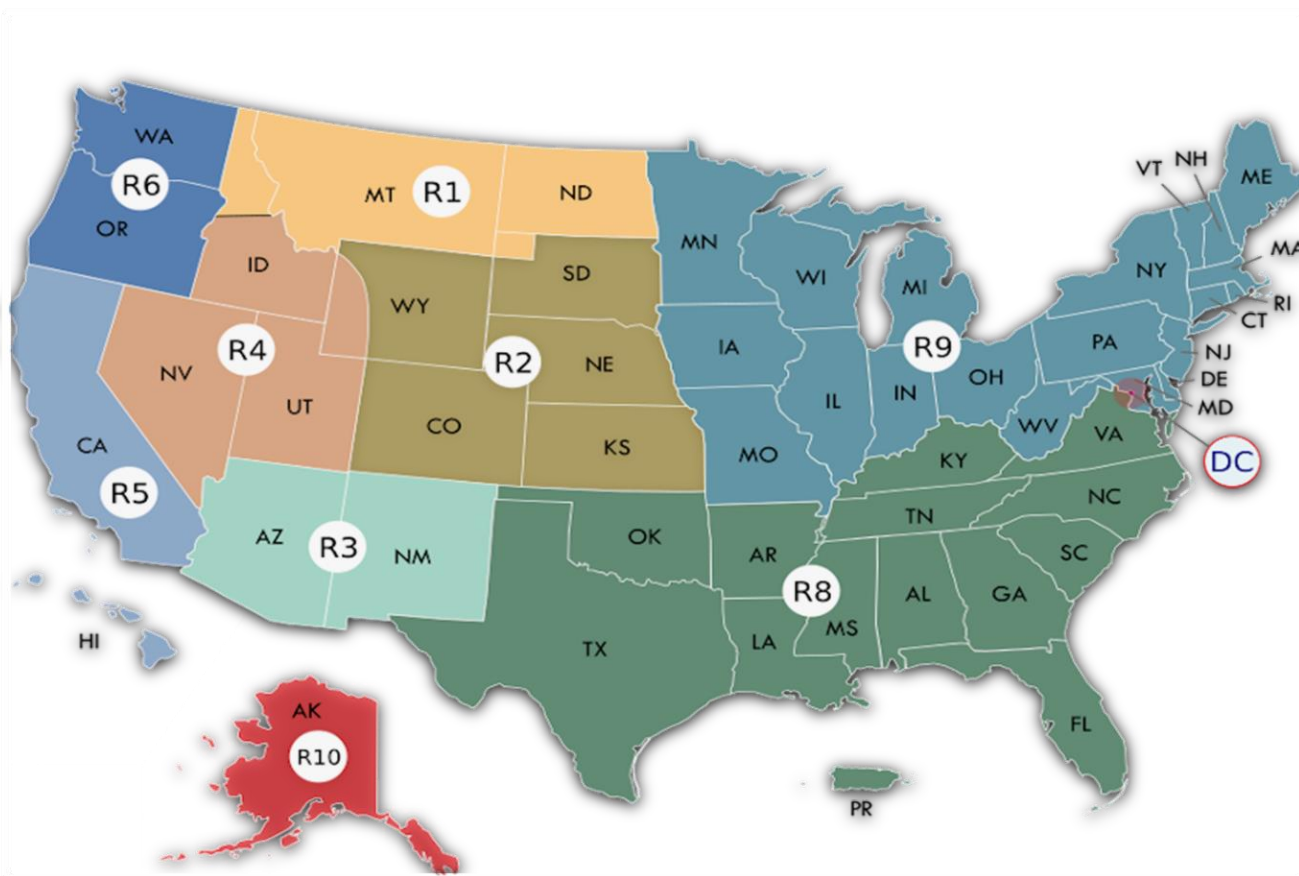


Figure 6. FS Regional Locations.

Restore Vegetation on Non-Federal Lands

One of FS' IJA priorities is to support strategic partnerships to revegetate formerly mined non-Federal lands and support environmental justice goals.¹² To accomplish its project work on non-Federal mined lands, FS leveraged existing networks and grant-making programs for FYs 2022 and 2023 with the National Fish and Wildlife Foundation (NFWF).¹³

For FYs 2022 and 2023, FS awarded a grant totaling more than \$2.3 million to NFWF.¹⁴ NFWF was to subsequently disburse the funds in competitive project sub-awards specifically to support revegetation of mined lands in Central Appalachia¹⁵ and the Cumberland Plateau.¹⁶ NFWF planned to work with its existing partner networks to raise additional funding to benefit the goals of the grant, providing a minimum 1:1 match of FS funds. NFWF stated that its approach would be focused on efforts that protect biodiversity, conserve, and restore priority habitats, serve as natural carbon sinks,¹⁷ and promote resilience to climate change and environmental stressors.

With the grant awarded to NFWF, FS reduced its administrative burden by utilizing NFWF's grants management expertise and processes to establish subaward agreements and to monitor sub-recipient outcomes. After the solicitation process and its initial evaluation, NFWF consults with the FS program manager prior to selection to ensure potential project sub-awards align with FS' program goals and priorities. Furthermore, NFWF will solicit projects that are in counties with persistent poverty and/or that engage underserved and socially disadvantaged landowners. According to FS, after NFWF's consultation, the FS program manager must agree with the final determination of the sub-award projects. As of October 2023, NFWF awarded five project sub-awards totaling more than \$1.55 million to support revegetation of mined lands in Central Appalachia and the Cumberland Plateau. Figure 7 below shows FYs 2022 and 2023 approved project sub-awards by location and obligated amount.

¹² This priority is part of FS IJA Year Two Goals as listed in the *FY 2023 Bipartisan Infrastructure Law (BIL) Program Budget Direction*, Feb. 3, 2023.

¹³ FS officials stated that FS did not consider other grant recipients because NFWF is a Congressionally chartered foundation with competitive programs to support restoration on non-Federal lands.

¹⁴ In FY 2022, FS awarded a grant totaling \$1,153,000 to the NFWF. In FY 2023, FS modified the grant to add an additional \$1,153,000.

¹⁵ NFWF's Central Appalachia Habitat Stewardship Program restores and sustains healthy forests, rivers and streams that provide habitat for diverse native bird and aquatic species populations. The program supports projects in portions of the Appalachian region of Maryland, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

¹⁶ NFWF's Cumberland Plateau Stewardship Fund is dedicated to restoring native forests to conditions that will improve associated wildlife species and the health of freshwater systems, while advancing strategies to support working forests within the Cumberland Plateau. The Cumberland Plateau consists of land from northwest Alabama to the Kentucky-West Virginia border.

¹⁷ *Carbon sinks* are natural or man-made systems that absorb more carbon than they release. As forests grow, they can become carbon sinks that offset anthropogenic (human-caused) emissions of carbon dioxide, a climate-warming greenhouse gas.

| Fiscal Year | Number of Approved Project Sub-awards for Central Appalachian | Obligated Amount for Central Appalachian | Number of Approved Project Sub-awards for Cumberland Plateau | Obligated Amount for Cumberland Plateau |
|--------------------|--|---|---|--|
| 2022 | 2 | \$500,000 | - | - |
| 2023 | 1 | \$350,443 | 2 | \$704,500 |
| Total | 3 | \$850,443 | 2 | \$704,500 |

Figure 7. FYs 2022 and 2023 Approved Project Sub-Awards to Restore Vegetation on Non-Federal Lands.

Restore Vegetation on Federal Lands

An additional FS’ IJA priority is to remediate abandoned mines and orphaned wells in or adjacent to environmental justice communities (low-income and/or minority populations) and Tribal Nations.¹⁸ To accomplish this, FS regions selected projects that aimed to restore native vegetation on FS’ mined lands, and also considered environmental justice, equity, and climate resilience. Figure 8 below shows a revegetation restoration project on a national forest.



Figure 8. Revegetation Restoration Project on a National Forest. USDA Forest Service Photo by Dave Pearson.

¹⁸ This priority is part of FS IJA Year Two Goals as listed in the *FY 2023 Bipartisan Infrastructure Law (BIL) Program Budget Direction*, Feb. 3, 2023.

For FYs 2022 and 2023, FS obligated more than \$1 million of IJA funds to four regions for use on projects that are expected to restore native vegetation on FS’ mined lands. In FY 2022, FS obligated a total of \$514,000 to two regions. In FY 2023, FS obligated a total of \$546,699 to three regions. Figure 9 below shows FYs 2022 and 2023 approved projects by location and obligated amount.

| FS Location | Number of Approved Projects | Obligated Amount |
|---|------------------------------------|-------------------------|
| Region 2: Rocky Mountain Region (R2) | 4 | \$237,500 |
| Region 4: Intermountain Region (R4) | 1 | \$167,318 |
| Region 9: Eastern Region (R9) | 1 | \$365,000 |
| Region 10: Alaska (R10) | *1 | \$290,881 |
| Total | 7 | \$1,060,699 |
| * This project was obligated \$149,000 in FY 2022 and \$141,881 in FY 2023. | | |

Figure 9. FYs 2022 and 2023 Approved Projects to Restore Vegetation on Federal Lands.

During the project selection process, FS’ Washington Office and units were expected to examine the demographic composition of the project site. As noted in an internal FS IJA program briefing paper, FS officials used a beta version of the CEJST to screen for environmental justice sites when selecting restoration projects on FS’ mined lands. These restoration projects were expected to benefit disadvantaged communities in the category of remediation and reduction of legacy pollution. To meet the intent of the Justice40 Initiative, when feasible, units were expected to select projects in disadvantaged communities based on the CEJST mapping.

Objectives, Scope, and Methodology

We conducted this work as part of our ongoing inspection with the objective to conduct integrated oversight of the funding provided to FS' Restoration Projects on Federal and Non-Federal Land from IIJA. Specifically, we announced we would review program information for transparency and disclosure, perform data analytics on relative data sets for integrity and quality, inspect key aspects of the internal control environment, and review the implementation of the program. This report provides information related to reviewing program information for transparency and disclosure as well as program implementation.

To accomplish this part of our objectives, we identified the requirements for IIJA's Restoration Projects on Federal/Non-Federal Mined Land and gained an understanding of the restoration projects program through publicly available information, discussions with FS officials, and a review of documentation provided by FS. We provided a draft of this product to FS management for their review and technical comments; no comments were provided. This report includes information about the program as of March 2024.

We conducted our inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Banner photo of an ecosystem restoration project on a national forest. USDA Forest Service photo by Lauren Marshall. The banner photograph is from USDA's Flickr site and is in the public domain. It does not depict any particular audit or investigation.

Learn more about USDA OIG at <https://usdaoig.oversight.gov>
Find us on LinkedIn: US Department of Agriculture OIG
Find us on Twitter: @OIGUSDA

**Report suspected wrongdoing in USDA programs:
<https://usdaoig.oversight.gov/hotline>**

Toll-free: 800-424-9121

In Washington, DC: 202-690-1622



All photographs on the front and back covers are from Adobe Stock with a licensing agreement.
They do not depict any particular audit, inspection, or investigation.

U.S. Department of Agriculture (USDA) is an equal opportunity provider, employer, and lender.

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.